

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2007

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission File Number 1-12002

ACADIA REALTY TRUST

(Exact name of registrant as specified in its charter)

Maryland
(State of incorporation)

23-2715194
(I.R.S. employer identification no.)

1311 Mamaroneck Avenue, Suite 260
White Plains, NY 10605

(Address of principal executive offices)

(914) 288-8100

(Registrant's telephone number)

Securities registered pursuant to Section 12(b) of the Act:

Common Shares of Beneficial Interest, \$.001 par value

(Title of Class)

New York Stock Exchange

(Name of Exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

YES NO

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15 (d) of the Securities Act.

YES NO

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

YES NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller Reporting Company

(Do not check if a smaller reporting company)

Indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act)

YES NO

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was \$835.8 million, based on a price of \$25.98 per share, the average sales price for the registrant's shares of beneficial interest on the New York Stock Exchange on that date.

The number of shares of the registrant's Common Shares of Beneficial Interest outstanding on February 29, 2008 was 32,184,462.

DOCUMENTS INCORPORATED BY REFERENCE

Part III – Portions of the registrant's definitive proxy statement relating to its 2008 Annual Meeting of Shareholders presently scheduled to be held May 14, 2008 to be filed pursuant to Regulation 14A.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained in this Annual Report on Form 10-K may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities and Exchange Act of 1934 and as such may involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from future results, performance or achievements expressed or implied by such forward-looking statements. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations are generally identifiable by use of the words “may,” “will,” “should,” “expect,” “anticipate,” “estimate,” “believe,” “intend” or “project” or the negative thereof or other variations thereon or comparable terminology. Factors which could have a material adverse effect on our operations and future prospects include, but are not limited to those set forth under the heading “Item 1A. Risk Factors” in this Form 10-K. These risks and uncertainties should be considered in evaluating any forward-looking statements contained or incorporated by reference herein.

PART I

ITEM 1. BUSINESS

GENERAL

Acadia Realty Trust (the “Trust”) was formed on March 4, 1993 as a Maryland real estate investment trust (“REIT”). All references to “Acadia,” “we,” “us,” “our,” and “Company” refer to Acadia Realty Trust and its consolidated subsidiaries. We are a fully integrated, self-managed and self-administered equity REIT focused primarily on the ownership, acquisition, redevelopment and management of retail properties, including neighborhood and community shopping centers and mixed-use properties with retail components. We currently operate 76 properties, which we own or have an ownership interest in. These assets are located primarily in the Northeast, Mid-Atlantic and Midwestern regions of the United States, which, in total, comprise approximately eight million square feet. We also have private equity investments in other retail real estate related opportunities including investments for which we provide operational support to the operating ventures in which we have a minority equity interest.

All of our investments are held by, and all of our operations are conducted through, Acadia Realty Limited Partnership (the “Operating Partnership”) and entities in which the Operating Partnership owns a controlling interest. As of December 31, 2007, the Trust controlled 98% of the Operating Partnership as the sole general partner. As the general partner, the Trust is entitled to share, in proportion to its percentage interest, in the cash distributions and profits and losses of the Operating Partnership. The limited partners represent entities or individuals, which contributed their interests in certain properties or entities to the Operating Partnership in exchange for common or preferred units of limited partnership interest (“Common OP Units” or “Preferred OP Units”). Limited partners holding Common OP Units are generally entitled to exchange their units on a one-for-one basis for our common shares of beneficial interest (“Common Shares”). This structure is referred to as an umbrella partnership REIT or “UPREIT”.

BUSINESS OBJECTIVES AND STRATEGIES

Our primary business objective is to acquire, develop and manage commercial retail properties that will provide cash for distributions to shareholders while also creating the potential for capital appreciation to enhance investor returns. We focus on the following fundamentals to achieve this objective:

- Own and operate a portfolio of community and neighborhood shopping centers and mixed-use properties with a retail component located in markets with strong demographics
- Generate internal growth within the portfolio through aggressive redevelopment, re-anchoring and leasing activities
- Generate external growth through an opportunistic yet disciplined acquisition program. The emphasis is on targeting transactions with high inherent opportunity for the creation of additional value through redevelopment and leasing and/or transactions requiring creative capital structuring to facilitate the transactions
- Partner with private equity investors for the purpose of making investments in operating retailers with significant embedded value in their real estate assets
- Maintain a strong and flexible balance sheet through conservative financial practices while ensuring access to sufficient capital to fund future growth

Investment Strategy — External Growth through Opportunistic Acquisition Platforms

The requirements that acquisitions be accretive on a long-term basis based on our cost of capital, as well as increase the overall portfolio quality and value, are core to our acquisition program. As such, we constantly evaluate the blended cost of equity and debt and adjust the amount of acquisition activity to align the level of investment activity with capital flows. We may also engage in discussions with public and private entities regarding business combinations. In addition to our direct investments in real estate assets, we have also capitalized on our expertise in the acquisition, redevelopment, leasing and management of retail real estate by establishing discretionary opportunity fund joint ventures in which we earn, in addition to a return on our equity interest and carried interest (“Promote”), fees and priority distributions for our services. To date, we have launched three discretionary opportunity fund joint ventures, Acadia Strategic Opportunity Fund, LP (“Fund I”), Acadia Strategic Opportunity Fund II, LLC (“Fund II”) and Acadia Strategic Opportunity Fund III, LLC (“Fund III”). Due to our control, we consolidate these funds.

Fund I

During September of 2001, we and four of our institutional shareholders formed a joint venture, Fund I, and during August of 2004 formed a limited liability company, Acadia Mervyn Investors I, LLC (“Mervyns I”), whereby the investors committed \$70.0 million for the purpose of acquiring real estate assets. The Operating Partnership committed an additional \$20.0 million in the aggregate to Fund I and Mervyns I, as the general partner with a 22% interest. In addition to a pro-rata return on its invested equity, the Operating Partnership is entitled to a Promote based upon certain investment return thresholds. Cash flow is distributed pro-rata to the partners (including the Operating Partnership) until they have received a 9% cumulative return (“Preferred Return”) on, and a return of all capital contributions.

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Thereafter, remaining cash flow is distributed 80% to the partners (including the Operating Partnership) and 20% to the Operating Partnership as a Promote. The Operating Partnership also earns fees and/or priority distributions for asset management services equal to 1.5% of the allocated invested equity, as well as for property management, leasing and construction services. All such fees and priority distributions are reflected as a reduction in the minority interest share in income from opportunity funds in the Consolidated Financial Statements beginning on page F-1 of this Form 10-K.

Our acquisition program was executed primarily through Fund I through June 2004. Fund I focused on targeting assets for acquisition that had superior in-fill locations, restricted competition due to high barriers of entry and in-place below-market anchor leases with the potential to create significant additional value through re-tenanting, timely capital improvements and property redevelopment.

On January 4, 2006, Fund I recapitalized a one million square foot retail portfolio located in Wilmington Delaware (“Brandywine Portfolio”) through a merger of interests with affiliates of GDC Properties (“GDC”). The Brandywine Portfolio was recapitalized through a “cash-out” merger of the 77.8% interest, which was previously held by the institutional investors in Fund I, to GDC at a valuation of \$164.0 million. The Operating Partnership, through a subsidiary, retained its existing 22.2% interest and continues to operate the Brandywine Portfolio and earn fees for such services. At the closing of the merger, the Fund I investors received a return of all of their capital invested in Fund I and their unpaid preferred return, thus triggering the payment to the Operating Partnership of its additional 20% Promote in all future Fund I distributions. During June 2006, the Fund I investors received \$36.0 million of additional proceeds from this transaction following the replacement of bridge financing which they provided, with permanent mortgage financing, triggering \$7.2 million in additional Promote due the Operating Partnership, which was paid from the Fund I investor’s share of the remaining assets in Fund I.

As of December 31, 2007, there were 29 assets comprising approximately 1.5 million square feet remaining in Fund I in which the Operating Partnership’s interest in cash flow and income has increased from 22.2% to 37.8% as a result of the Promote.

Fund II

Following our success with Fund I, during June of 2004 we formed a second, larger acquisition joint venture, Fund II, and during August of 2004, formed Acadia Mervyn Investors II, LLC (“Mervyns II”), with the investors from Fund I as well as two additional institutional investors. With \$300.0 million of committed discretionary capital, Fund II and Mervyns II, combined, expect to be able to acquire up to \$900.0 million of real estate assets on a leveraged basis. The Operating Partnership is the managing member with a 20% interest in Fund II and Mervyns II. The terms and structure of Fund II and Mervyns II are substantially the same as Fund I and Mervyns I with the exception that the Preferred Return is 8%. As of December 31, 2007, \$182.0 million of Fund II’s capital was invested and the balance of \$118.0 million was committed to existing investments.

As the demand for retail real estate has significantly increased in recent years, there has been a commensurate increase in selling prices. In an effort to generate superior risk-adjusted returns for our shareholders and fund investors, we have channeled our acquisition efforts through Fund II in two opportunistic strategies described below – the Retailer Controlled Property Venture and the New York Urban Infill Redevelopment Initiative.

Retailer Controlled Property Venture (the “RCP Venture”)

On January 27, 2004, through Funds I and II, we entered into the RCP Venture with Klaff Realty, L.P. (“Klaff”) and Lubert-Adler Management, Inc. (“Lubert-Adler”) for the purpose of making investments in surplus or underutilized properties owned by retailers. The expected size of the RCP Venture is approximately \$300 million in equity, of which our share is \$60 million, based on anticipated investments of approximately \$1 billion. Each participant in the RCP Venture has the right to opt out of any potential investment. Affiliates of Mervyns I and II and Fund II have invested \$55.4 million in the RCP Venture to date on a non-recourse basis. While we are not required to invest any additional capital into any of these investments, should additional capital be required and we elect not to contribute our share, our proportionate share in the investment will be reduced. As Fund I is fully invested, Fund II and Fund III will provide the remaining portion of our original share of the equity in future RCP Venture investments. Cash flow from any RCP investment is to be distributed to the partners until they have received a 10% cumulative return and a full return of all contributions. Thereafter, remaining cash flow is to be distributed 20% to Klaff (“Klaff’s Promote”) and 80% to the participants (including Klaff). The Operating Partnership may also earn market-rate fees for property management, leasing and construction services on behalf of the RCP Venture. While we are primarily a passive partner in the investments made through the RCP Venture, historically we have provided our support on reviewing potential acquisitions and operating and redevelopment assistance in areas where we have both a presence and expertise. We seek to invest opportunistically with the RCP Venture primarily in the following four ways:

- Invest in operating retailers through private equity joint ventures
- Work with financially healthy retailers to create value from their surplus real estate
- Acquire properties, designation rights or other control of real estate or leases associated with retailers in bankruptcy
- Complete sale leasebacks with retailers in need of capital

During 2004, we made our first RCP Venture investment with our participation in the acquisition of Mervyns. During 2006 and 2007, we made additional investments as further discussed in “—PROPERTY ACQUISITIONS” below.

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New York Urban/Infill Redevelopment Initiative

During September of 2004, through Fund II, we launched our New York Urban Infill Redevelopment initiative. As retailers continue to recognize that many of the nation's urban markets are underserved from a retail standpoint, we are poised to capitalize on this trend by investing in redevelopment projects in dense urban areas where retail tenant demand has effectively surpassed the supply of available sites. During 2004, Fund II, together with an unaffiliated partner, P/A Associates, LLC ("P/A"), formed Acadia-P/A Holding Company, LLC ("Acadia-P/A") for the purpose of acquiring, constructing, developing, owning, operating, leasing and managing certain retail or mixed-use real estate properties in the New York City metropolitan area. P/A agreed to invest 10% of required capital up to a maximum of \$2.2 million and Fund II, the managing member, agreed to invest the balance to acquire assets in which Acadia-P/A agrees to invest. See Item 7 of this Form 10K for further information on the Acadia P/A Joint Venture as detailed in "Liquidity and Capital Resources". To date, Fund II has invested in nine projects, eight of which are in conjunction with P/A, as discussed further in "—PROPERTY ACQUISITIONS" below.

Fund III

Following the success of Fund I and the full investment of Fund II, we formed a third discretionary opportunity fund, Acadia Strategic Opportunity Fund III, LLC ("Fund III") during 2007, with fourteen institutional investors, including a majority of the investors from Fund I and Fund II. With \$503.0 million of committed discretionary capital, Fund III expects to be able to acquire or develop approximately \$1.5 billion of assets on a leveraged basis. The Operating Partnership's share of the committed capital is \$100.0 million and it is the sole managing member with a 19.9% interest in Fund III. The terms and structure of Fund III are substantially the same as the previous Funds, including the Promote structure, with the exception that the Preferred Return is 6%. To date, Fund III has invested in two projects, one of which is under our New York Urban Infill Redevelopment Program, as discussed further in "PROPERTY ACQUISITIONS" in this Item 1 of this Form 10-K.

Other Investments

We may also invest in preferred equity investments, mortgage loans, other real estate interests and other investments. The mortgage loans in which we invest may be either first or second mortgages, where we believe the underlying value of the real estate collateral is in excess of its loan balance. As of December 31, 2007 our investments in first mortgages and mezzanine debt aggregated \$57.7 million.

Capital Strategy — Balance Sheet Focus and Access to Capital

Our primary capital objective is to maintain a strong and flexible balance sheet through conservative financial practices while ensuring access to sufficient capital to fund future growth. We intend to continue financing acquisitions and property redevelopment with sources of capital determined by management to be the most appropriate based on, among other factors, availability, pricing and other commercial and financial terms. The sources of capital may include the issuance of public equity, unsecured debt, mortgage and construction loans, and other capital alternatives including the issuance of Operating Partnership Units. We manage our interest rate risk primarily through the use of fixed rate-debt and, where we use variable rate debt, we use certain derivative instruments, including LIBOR swap agreements and interest rate caps as discussed further in Item 7A of this Form 10-K.

During December of 2006 and January of 2007, we issued \$115.0 million of 3.75% unsecured Convertible Notes (the "Notes"). Interest on the Notes is payable semi-annually. The Notes have an initial conversion rate of 32.4002 of our Common Shares for each \$1,000 principal amount, representing a conversion price of approximately \$30.86 per Common Share, or a conversion premium of approximately 20.0% based upon our Common Share price on the date of the issuance of the Notes. The Notes are redeemable for cash up to their principal amount plus accrued interest and, at our option, cash, our Common Shares, or a combination thereof with respect to the remainder, if any, of the conversion value in excess of the principal amount. The Notes mature December 15, 2026, although the holders of the Notes may require the Company to repurchase their Notes, in whole or in part, on December 20, 2011, December 15, 2016, and December 15, 2021. After December 20, 2011, we have the right to redeem the Notes in whole or in part at any time. The \$112.1 million in proceeds, net of related costs, were used to retire variable rate debt, provide for future Fund capital commitments and for general working capital purposes.

During January 2007, we filed a shelf registration on Form S-3 providing for offerings of up to a total of \$300.0 million of Common Shares, Preferred Shares and debt securities. To date, we have not issued any securities pursuant to this shelf registration.

Common and Preferred OP Unit Transactions

On January 27, 2004, we issued 4,000 Series B Preferred OP Units to Klaff in connection with the acquisition from Klaff of its rights to provide asset management, leasing, disposition, development and construction services for an existing portfolio of retail properties. These units have a stated value of \$1,000 each and are entitled to a quarterly preferred distribution of the greater of (i) \$13.00 (5.2% annually) per Preferred OP Unit or (ii) the quarterly distribution attributable to a Preferred OP Unit if such unit were converted into a Common OP Unit. The Preferred OP Units are convertible into Common OP Units based on the stated value of \$1,000 divided by 12.82 at any time. Klaff may redeem them at par for either cash or Common OP Units (at our option). In 2007, Klaff converted all 4,000 Series B Preferred OP Units into 312,013 Common OP Units and ultimately into Common Shares.

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Effective February 15, 2005, we acquired the balance of Klaff's rights to provide the above services as well as certain potential future revenue streams. The consideration for this acquisition was \$4.0 million in the form of 250,000 restricted Common OP Units, valued at \$16 per unit, which are convertible into our Common Shares on a one-for-one basis after a five-year lock-up period. As part of this transaction we also assumed all operational and redevelopment responsibility for the Klaff Properties a year earlier than was contemplated in the January 2004 transaction.

Operating Strategy — Experienced Management Team with Proven Track Record

Our senior management team has decades of experience in the real estate industry. We believe our management team has demonstrated the ability to create value internally through anchor recycling, property redevelopment and strategic non-core dispositions. Our team has built several successful acquisition platforms including our New York Urban Infill Redevelopment Initiative and RCP Venture. We have also capitalized on our expertise in the acquisition, redevelopment, leasing and management of retail real estate by establishing joint ventures, such as Funds I, II and III, in which we earn, in addition to a return on our equity interest and Promote, fees and priority distributions.

Operating functions such as leasing, property management, construction, finance and legal (collectively, the "Operating Departments") are provided by our personnel, providing for fully integrated property management and development. By incorporating the Operating Departments in the acquisition process, acquisitions are appropriately priced giving effect to each asset's specific risks and returns. Also, because of the Operating Departments involvement with, and corresponding understanding of, the acquisition process, transition time is minimized and management can immediately execute on its strategic plan for each asset.

We typically hold our core properties for long-term investment. As such, we continuously review the existing portfolio and implement programs to renovate and modernize targeted centers to enhance the property's market position. This in turn strengthens the competitive position of the leasing program to attract and retain quality tenants, increasing cash flow and consequently property value. We also periodically identify certain properties for disposition and redeploy the capital to existing centers or acquisitions with greater potential for capital appreciation. Our core portfolio consists primarily of neighborhood and community shopping centers, which are generally dominant centers in high barrier-to-entry markets. The anchors at these centers typically pay market or below-market rents. Furthermore, supermarket and necessity-based retailers anchor the majority of our core portfolio. These attributes enable our properties to better withstand a weakening economy while also creating opportunities to increase rental income.

During 2007, 2006 and 2005 we sold seven non-core properties and redeployed the capital to acquire seven retail properties as further discussed in "— ASSET SALES AND CAPITAL/ASSET RECYCLING" below.

PROPERTY ACQUISITIONS

RCP Venture

Albertson's

In June 2006, the RCP Venture made its second major investment with its participation in the acquisition of 699 stores from Albertson's, the nation's 2nd largest grocery and drug chain and 26 Cub Food stores. The total price paid by the investment consortium, which included Cerberus, Schottenstein and Kimco Realty, to Albertson's for the portfolio was \$1.9 billion, which was funded with \$0.3 billion of equity and \$1.6 billion of financing. Mervyns II's share of equity invested totaled \$20.7 million. The Operating Partnership's share was \$4.2 million. As with the Mervyns investment (see below), we anticipate investing in Albertson's add-on real estate opportunities.

During February of 2007, Mervyns II received cash distributions totaling approximately \$44.4 million from its ownership position in Albertson's. The Operating Partnership's share of this distribution amounted to approximately \$8.9 million. The distributions primarily resulted from proceeds received by Albertson's in connection with its disposition of certain stores, refinancing of the remaining assets held in the entity and excess cash from operations. Mervyns II received additional distributions from this investment totaling \$8.8 million during the balance of the year ended December 31, 2007. The Operating Partnership's share of these distributions was \$1.0 million.

For the years ended December 31, 2007 and 2006, Mervyns II made additional add-on investments in Albertson's totaling \$2.8 million and received distributions totaling \$0.8 million in the aggregate from these add-on investments. The Operating Partnership's share of such amounts was \$0.4 million and \$0.1 million, respectively.

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Mervyns Department Stores

In September 2004, we made our first RCP Venture investment with our participation in the acquisition of Mervyns. Through Mervyns I and Mervyns II, we invested in the acquisition of Mervyns as part of an investment consortium of Sun Capital and Cerberus that acquired Mervyns from Target Corporation. As of the date of acquisition, Mervyns was a 257-store discount retailer with a very strong West Coast concentration. The total acquisition price was approximately \$1.2 billion which was financed with \$800 million of debt and \$400 million of equity. Mervyns I and Mervyns II share of equity invested aggregated \$23.9 million on a non-recourse basis and was divided equally between them. The Operating Partnership's share was \$4.9 million. During November 2007, Mervyns II made an additional investment of \$2.2 million in Mervyns.

For the year ended December 31, 2005, Mervyns I and Mervyns II made add-on investments in Mervyns properties totaling \$1.3 million. The Operating Partnerships share of this amount was \$0.3 million.

During 2005, Mervyns made a distribution to the investors from the proceeds from the sale of a portion of the portfolio and the refinancing of existing debt, of which a total of \$42.7 million was distributed to Mervyns I and Mervyns II. The Operating Partnership's share of this distribution amounted to \$10.2 million. In addition, during 2006, Mervyns distributed additional cash totaling \$4.6 million. The Operating Partnership's share of this distribution totaled \$1.4 million.

Other Investments

During 2006, Fund II invested \$1.1 million in Shopko, a regional multi-department retailer with 358 stores located throughout the Midwest, Mountain and Pacific Northwest and \$0.7 million in Marsh, a regional supermarket chain operating 271 stores in central Indiana, Illinois and western Ohio. The Operating Partnership's share of these investments totaled \$0.2 million. For the year ended December 31, 2007, Fund II received a \$1.1 million distribution from the Shopko investment, of which the Operating Partnership's share was \$0.2 million.

During July 2007, Mervyns II invested \$2.7 million in REX Stores Corporation which is comprised of electronic retail stores located in 27 states. The Operating Partnership's share was \$0.5 million.

The following table summarizes the RCP Venture investments from inception through December 31, 2007:

(dollars in millions)		Year acquired	Invested capital	Distributions	Operating Partnership Share	
Investor	Investment				Invested capital	Distributions
Mervyns I and Mervyns II	Mervyns	2004	\$ 26.1	\$ 46.0	\$ 4.9	\$ 11.3
Mervyns I and Mervyns II	Mervyns add-on investments	2005	1.3	1.3	0.3	0.3
Mervyns II	Albertson's	2006	20.7	53.2	4.2	9.8
Mervyns II	Albertson's add-on investments	2006/2007	2.8	0.8	0.4	0.1
Fund II	Shopko	2006	1.1	1.1	0.2	0.2
Fund II	Marsh	2006	0.7	¾	0.1	¾
Mervyns II	Rex	2007	2.7	¾	0.5	¾
Total			<u>\$ 55.4</u>	<u>\$ 102.4</u>	<u>\$ 10.6</u>	<u>\$ 21.7</u>

New York Urban/Infill Redevelopment Initiative

Sheepshead Bay- During November of 2007, Fund III acquired a property in Sheepshead Bay, Brooklyn for approximately \$20.0 million. Our redevelopment plan includes the demolition of the existing structures and the construction of a 240,000 square foot shopping center on the site. The total cost of the redevelopment, including acquisition costs, is expected to be approximately \$109.0 million.

Canarsie — During October of 2007, Acadia P/A acquired a 530,000 square foot warehouse building in Canarsie, Brooklyn for approximately \$21.0 million. The development plan for this property includes the demolition of a portion of the warehouse and the construction of a 320,000 square foot mixed-use project consisting of retail, office, cold-storage and self-storage. The total cost of the redevelopment, including acquisition costs, is expected to be approximately \$70.0 million.

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CityPoint – During February of 2007, Acadia-P/A entered into an agreement for the purchase of the leasehold interest in The Gallery at Fulton Street in downtown Brooklyn. The fee position in the property is owned by the City of New York and the agreement includes an option to purchase this fee position at a later date. Acadia P/A has partnered with MacFarlane Partners (“MacFarlane”) to co-develop the project. On June 13, 2007, Acadia P/A and MacFarlane acquired the leasehold interest for approximately \$115.0 million. Redevelopment plans for the property, renamed as CityPoint, include the demolition of the existing structure and the development of a 1.6 million square foot mixed-use complex. The proposed development calls for the construction of a combination of retail, office and residential components, all of which are currently allowed as of right. Acadia P/A, together with MacFarlane, will develop and operate the retail component, which is anticipated to total 475,000 square feet of retail space. Acadia P/A will also participate in the development of the office component with MacFarlane, which is expected to include at least 125,000 square feet of office space. MacFarlane plans to develop and operate up to 1,000 residential units with underground parking. Acadia P/A does not plan on participating in the development of, or have an ownership interest in, the residential component of the project.

Atlantic Avenue – During May 2007, we, through Fund II and in partnership with a self-storage partner at several of the other New York urban projects, acquired a property on Atlantic Avenue in Brooklyn, New York for \$5.0 million. Redevelopment plans for the property call for the demolition of the existing structure and the construction of a modern climate controlled self-storage facility consisting of approximately 110,000 square feet.

Liberty Avenue — On December 20, 2005, Acadia-P/A acquired the remaining 40-year term of a leasehold interest in land located at Liberty Avenue and 98th Street in Queens (Ozone Park). Development of this project is complete and includes approximately 30,000 square feet of retail anchored by a CVS drug store, which is open and operating. The project also includes a 95,000 square foot self-storage facility, which is open and currently operated by Storage Post. Storage Post is a partner in the self-storage complex, and is anticipated to be a partner in future retail projects in New York City where self-storage will be a potential component of the redevelopment. The total cost to Acadia P/A of the redevelopment was approximately \$15 million.

216th Street — On December 1, 2005, Acadia-P/A acquired a 65,000 square foot parking garage located at 10th Avenue and 216th Street in the Inwood section of Manhattan for \$7.0 million. During 2007, construction of the 60,000 square foot office building was completed and we relocated an agency of the City of New York, which was a tenant at another of our Urban/Infill Redevelopment projects. Inclusive of acquisition costs, total costs to Acadia P/A for the project, which also includes a 100-space rooftop parking deck, was approximately \$27 million.

161st Street — On August 5, 2005, Acadia-P/A purchased 244-268 161st Street located in the Bronx for \$49.3 million, inclusive of closing costs. The ultimate redevelopment plan for the property, a 100% occupied, 10-story office building, is to reconfigure the property so that approximately 50% of the income from the building will eventually be derived from retail tenants. Additional redevelopment costs to Acadia P/A are anticipated to be approximately \$16 million.

4650 Broadway — On April 6, 2005, Acadia-P/A acquired 4650 Broadway located in the Washington Heights/Inwood section of Manhattan. The property, a 140,000 square foot building, which was occupied by an agency of the City of New York and a commercial parking garage, was acquired for a purchase price of \$25.0 million. During 2007 we relocated the office tenant to Acadia P/A’s 216th St. redevelopment as discussed above. We are currently reviewing various alternatives to redevelop the site to include retail and office components totaling over 216,000 square feet. Expected costs for Acadia P/A to complete the redevelopment are estimated at \$30.0 million.

Pelham Manor — On October 1, 2004, Acadia-P/A entered into a 95-year, inclusive of extension options, ground lease to redevelop a 16-acre site in Pelham Manor, Westchester County, New York. We have demolished the existing industrial and warehouse buildings, and are constructing a multi-anchor community retail center at a total estimated cost of \$45.0 million.

Fordham Road — On September 29, 2004, Acadia-P/A purchased 400 East Fordham Road, Bronx, New York. Sears, a former tenant that operated on four levels at this property, has signed a new lease to occupy only the concourse level after redevelopment. We have commenced redevelopment at this site, which is expected to include four levels of retail and office space totaling 285,000 square feet when completed. The total cost of the project to Acadia P/A, including the acquisition cost of \$30 million, is expected to be \$120.0 million.

Other investments

In addition to the New York Urban/Infill projects discussed above, through Fund II and Fund III, we also acquired the following:

During November 2007, Fund III acquired 125 Main Street, Westport, Connecticut for approximately \$17.0 million. Our plan is to redevelop the existing building into 30,000 square feet of retail, office and residential use.

During November 2005, Fund II acquired a ground lease interest in a 112,000 square foot building occupied by Neiman Marcus. The property is located at Oakbrook Center, a super-regional Class A mall located in the Chicago Metro area. The ground lease was acquired for \$6.9 million, including closing and other acquisition costs.

During July 2005, Fund II acquired for \$1.0 million, a 50% equity interest in an entity which has a leasehold interest in a former Levitz Furniture store located in Rockville, Maryland.

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Fund I

To date, through Fund I we have purchased a total of 35 assets totaling approximately 3.0 million square feet. During January 2006, we recapitalized the Brandywine Portfolio as discussed further in “—BUSINESS OBJECTIVES AND STRATEGIES”. Following the recapitalization of the Brandywine Portfolio and the sale of Amherst Marketplace and Sheffield Crossing as discussed below, there are 29 assets comprising 1.5 million square feet remaining in Fund I, (in which the Operating Partnership’s interest in cash flow and income has increased from 22.2% to 37.8% as a result of the Promote) as follows:

Shopping Center	Location	Year acquired	GLA
New York Region			
<i>New York</i>			
Tarrytown Centre	Westchester	2004	35,291
Mid-Atlantic Region			
<i>Virginia</i>			
Haygood Shopping Center	Virginia Beach	2004	178,533
Midwest Region			
<i>Ohio</i>			
Granville Centre	Columbus	2002	134,997
<i>Michigan</i>			
Sterling Heights Shopping Center	Detroit	2004	154,835
Various Regions			
Kroger/Safeway Portfolio	Various	2003	<u>1,018,100</u>
Total			<u>1,521,756</u>

During November 2007, Fund I sold Amherst Marketplace and Sheffield Crossing, community shopping centers in Ohio, for \$26.0 million, resulting in a \$7.5 million gain.

In November 2006, Fund I acquired the remaining 50% interest from our unaffiliated partner in the Tarrytown Centre for \$3.5 million.

During February 2006, Fund I finalized an agreement with our unaffiliated partner in the Hitchcock Plaza whereby we converted our common equity interest in the properties to a preferred equity position with a 15% preferred return payable currently and a 20% profit interest after all invested capital and preferred returns are paid. In connection with this agreement, our partner assumed all operational, redevelopment and leasing responsibilities. In August 2007, the Operating Partnership provided a \$5.6 million loan to the third party investor in Hitchcock Plaza who invested the proceeds into the partnership and were used to liquidate Fund I’s preferred equity investment and cumulative preferred return. Fund I retains a 20% profits interest, behind the return of our partner’s equity and cumulative preferred return.

Core Portfolio

During March of 2007, the Operating Partnership purchased a 52,000 square foot single-tenant building located at 1545 East Service Road in Staten Island, New York for \$17.0 million.

During March of 2007, the Operating Partnership purchased a retail commercial condominium at 200 West 54th Street located in Manhattan, New York. The 10,000 square foot property was acquired for \$36.4 million.

During September of 2006, the Operating Partnership purchased 2914 Third Avenue in the Bronx, New York for \$18.5 million. The 41,305 square foot property is 100% leased and is located in a densely populated, high barrier-to-entry, infill area.

During June of 2006, the Operating Partnership purchased 8400 and 8625 Germantown Road in Philadelphia, Pennsylvania for \$16.0 million.

During January of 2006, the Operating Partnership closed on a 20,000 square foot retail building in the Lincoln Park district in Chicago. The property was acquired from an affiliate of Klaff for \$9.9 million.

During January of 2006, the Operating Partnership acquired a 60% interest in the A&P Shopping Plaza located in Boonton, New Jersey. The property, located in northeastern New Jersey, is a 63,000 square foot shopping center anchored by a 49,000 square foot A&P Supermarket. The remaining 40% interest is owned by a principal of P/A. The interest was acquired for \$3.2 million.

During July 2005 the Operating Partnership purchased 4343 Amboy Road located in Staten Island, New York for \$16.6 million in cash and \$0.2 million in Common OP Units. The property, a 60,000 square foot neighborhood shopping center, is anchored by a Waldbaum’s supermarket and a Duane Reade drug store, and is subject to a 23-year ground lease.

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Other Investments

During March of 2005 the Operating Partnership invested \$20.0 million in a preferred equity position (“Preferred Equity Investment”) in Levitz SL, L.L.C. (“Levitz SL”), the owner of fee and leasehold interests in 30 current or former Levitz Furniture Store locations (the “Levitz Properties”), totaling 2.5 million square feet.

During June 2006, the Operating Partnership converted the Preferred Equity Investment to a first mortgage loan and advanced additional proceeds bringing the total outstanding amount to \$31.3 million. The loan matures on May 31, 2008 and bears interest at a rate of 10.5%. During 2006, Levitz SL sold one of the Levitz Properties located in Northridge, California and used \$20.4 million of the proceeds to pay down the loan. During 2007, Levitz SL sold an additional Levitz Property located in St. Paul Minnesota and used \$4.8 million of the proceeds to pay down the first mortgage loan. As of December 31, 2007, the loan balance amounted to \$6.1 million and was secured by fee and leasehold mortgages as well as a pledge of the entities owning 13 of the remaining Levitz Properties totaling 1.3 million square feet. Although Levitz Furniture filed for Chapter 7 bankruptcy protection during November 2007, we believe the underlying value of the real estate is sufficient to recover the principal and interest due under the mortgage.

ASSET SALES AND CAPITAL/ASSET RECYCLING

We periodically identify certain properties for disposition and redeploy the capital to existing centers or acquisitions with greater potential for capital appreciation. Since January 1, 2005, we have sold the following core portfolio assets:

<u>Shopping Center</u>	<u>Location</u>	<u>Date sold</u>	<u>GLA</u>	<u>Sales price (dollars in thousands)</u>
Colony and GHT Apartments	Columbia, Missouri	December 2007	625,545	\$ 15,512
Soundview Marketplace	Long Island, New York	December 2006	183,815	24,000
Bradford Towne Centre	Towanda, Pennsylvania	November 2006	257,123	16,000
Greenridge Plaza	Scranton, Pennsylvania	November 2006	191,767	10,600
Pittston Plaza	Pittston, Pennsylvania	November 2006	79,498	6,000
Luzerne Street Shopping Center	Scranton, Pennsylvania	November 2006	58,035	3,600
Berlin Shopping Center	Central New Jersey	July 2005	188,688	4,000
Total			<u>1,584,471</u>	<u>\$ 79,712</u>

Proceeds from these sales in part have been used to fund the core portfolio acquisitions as discussed in “—PROPERTY ACQUISITIONS” above.

PROPERTY REDEVELOPMENT AND EXPANSION

Our redevelopment program focuses on selecting well-located neighborhood and community shopping centers within our core portfolio and creating significant value through re-tenanting and property redevelopment.

During 2006, we commenced the redevelopment and re-tenanting of the Bloomfield Town Square, located in Bloomfield Hills, Michigan. A former out-parcel building was demolished and replaced with a 17,500 square foot building now occupied by Drexel Heritage and Panera Bread. The new tenants opened and commenced paying rent during 2006, and are paying a combined base rent at a 127% increase over that of the former tenant. In addition, we have leased approximately 26,000 square feet to Circuit City, which opened and commenced paying rent during September of 2007 at a 79% increase over that of the former tenants. Total costs for this project were \$4.6 million.

COMPETITION

There are numerous entities that compete with us in seeking properties for acquisition and tenants who will lease space in our properties. Our competitors include other REIT’s, financial institutions, insurance companies, pension funds, private companies and individuals. Our properties compete for tenants with similar properties primarily on the basis of location, total occupancy costs (including base rent and operating expenses), services provided, and the design and condition of the improvements.

FINANCIAL INFORMATION ABOUT MARKET SEGMENTS

We have three reportable segments: core portfolio, opportunity funds and other, which primarily consists of management fee income and interest income. We evaluate property performance primarily based on net operating income before depreciation, amortization and certain non-recurring items. Investments in our core portfolio are typically held long-term. Given the finite life of the opportunity funds, these investments are typically held for shorter terms. Fees earned by us as general partner/member of the opportunity funds are eliminated in our consolidated financial statements. We do not have any foreign operations. We previously reported two reportable segments, retail properties and multi-family properties. During December of 2007, we sold the majority of our multi-family properties and realigned our segments to reflect the way we now manage our business. See Note 3 to our consolidated financial statements, which begin on page F-1 of this Form 10-K for certain information regarding each of our segments.

CORPORATE HEADQUARTERS AND EMPLOYEES

Our executive offices are located at 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, and our telephone number is (914) 288-8100. As of December 31, 2007, we had 142 employees, of which 120 were located at our executive office, six at the Pennsylvania regional office and the remaining property management personnel were located on-site at our properties.

COMPANY WEBSITE

All of our filings with the Securities and Exchange Commission, including our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, are available free of charge at our website at www.acadiarealty.com, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. These filings can also be accessed through the Securities and Exchange Commission's website at www.sec.gov. Alternatively, we will provide paper copies of our filings free of charge upon request. Information included or referred to on our website is not incorporated by reference in or otherwise a part of this Form 10-K.

CODE OF ETHICS AND WHISTLEBLOWER POLICIES

The Board of Trustees adopted a Code of Ethics for Senior Financial Officers that applies to our Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, Controller, Director of Financial Reporting, Director of Taxation and Assistant Controllers. The Board also adopted a Code of Business Conduct and Ethics applicable to all employees, as well as a "Whistleblower Policy". Copies of these documents are available in the Investor Information section of our website.

ITEM 1A. RISK FACTORS

If any of the following risks actually occur, our business, results of operations and financial condition would likely suffer. This section includes or refers to certain forward-looking statements. Refer to the explanation of the qualifications and limitations on such forward-looking statements discussed in the beginning of this Form 10-K.

We rely on revenues derived from major tenants.

We derive significant revenues from certain anchor tenants that occupy space in more than one center. We could be adversely affected in the event of the bankruptcy or insolvency of, or a downturn in the business of, any of our major tenants, or in the event that any such tenant does not renew its leases as they expire or renews at lower rental rates. Vacated anchor space not only would reduce rental revenues if not re-tenanted at the same rental rates but also could adversely affect the entire shopping center because of the loss of the departed anchor tenant's customer drawing power. Loss of customer drawing power also can occur through the exercise of the right that most anchors have to vacate and prevent re-tenanting by paying rent for the balance of the lease term, or the departure of an anchor tenant that owns its own property. In addition, in the event that certain major tenants cease to occupy a property, such an action may result in a significant number of other tenants having the right to terminate their leases, or pay a reduced rent based on a percentage of the tenant's sales, at the affected property, which could adversely affect the future income from such property. See "Item 2. Properties—Major Tenants" for quantified information with respect the percentage of our minimum rents received from major tenants.

Tenants may seek the protection of the bankruptcy laws, which could result in the rejection and termination of their leases and thereby cause a reduction in the cash flow available for distribution by us. Such reduction could be material if a major tenant files bankruptcy. See the risk factor titled, "The bankruptcy of, or a downturn in the business of, any of our major tenants may adversely affect our cash flows and property values" below.

Limited control over joint venture investments.

Our opportunity fund investments may involve risks not otherwise present for investments made solely by us, including the possibility that our joint venture partner might have different interests or goals than we do. Other risks of joint venture investments include impasse on decisions, such as a sale, because neither we nor a joint venture partner would have full control over the joint venture. Also, there is no limitation under our organizational documents as to the amount of funds that may be invested in joint ventures.

Through our investments in joint ventures we have also invested in operating businesses that have operational risk in addition to the risks associated with real estate investments, including among other risks, human capital issues, adequate supply of product and material, and merchandising issues.

During 2007 and 2006, our joint ventures provided Promote income. There can be no assurance that the joint ventures will continue to operate profitably and thus provide additional Promote income in the future.

Under the terms of our Fund III joint ventures, we are required to first offer to Fund III all of our opportunities to acquire retail shopping centers. Only if (i) our joint venture partner elects not to approve Fund III's pursuit of an acquisition opportunity; (ii) the ownership of the acquisition opportunity by Fund III would create a material conflict of interest for us; (iii) we require the acquisition opportunity for a "like-kind" exchange; or (iv) the consideration payable for the acquisition opportunity is our Common Shares, OP Units or other securities, may we pursue the opportunity directly. As a result, we may not be able to make attractive acquisitions directly and may only receive a minority interest in such acquisitions through Fund III.

We operate through a partnership structure, which could have an adverse effect on our ability to manage our assets.

Our primary property-owning vehicle is the Operating Partnership, of which we are the general partner. Our acquisition of properties through the Operating Partnership in exchange for interests in the Operating Partnership may permit certain tax deferral advantages to limited partners who contribute properties to the Operating Partnership. Since properties contributed to the Operating Partnership may have unrealized gain attributable to the difference between the fair market value and adjusted tax basis in such properties prior to contribution, the sale of such properties could cause adverse tax consequences to the limited partners who contributed such properties. Although we, as the general partner of the Operating Partnership, generally have no obligation to consider the tax consequences of our actions to any limited partner, there can be no assurance that the Operating Partnership will not acquire properties in the future subject to material restrictions designed to minimize the adverse tax consequences to the limited partners who contribute such properties. Such restrictions could result in significantly reduced flexibility to manage our assets.

There are risks relating to investments in real estate.

Real property investments are subject to varying degrees of risk. Real estate values are affected by a number of factors, including: changes in the general economic climate, local conditions (such as an oversupply of space or a reduction in demand for real estate in an area), the quality and philosophy of management, competition from other available space, the ability of the owner to provide adequate maintenance and insurance and to control variable operating costs. Shopping centers, in particular, may be affected by changing perceptions of retailers or shoppers regarding the safety, convenience and attractiveness of the shopping center and by the overall climate for the retail industry generally. Real estate values are also affected by such factors as government regulations, interest rate levels, the availability of financing and potential liability under, and changes in, environmental, zoning, tax and other laws. A significant portion of our income is derived from rental income from real property, our income and cash flow would be adversely affected if a significant number of our tenants were unable to meet their obligations, or if we were unable to lease on economically favorable terms a significant amount of space in our properties. In the event of default by a tenant, we may experience delays in enforcing, and incur substantial costs to enforce, our rights as a landlord. In addition, certain significant expenditures associated with each equity investment (such as mortgage payments, real estate taxes and maintenance costs) are generally not reduced when circumstances cause a reduction in income from the investment.

The bankruptcy of, or a downturn in the business of, any of our major tenants may adversely affect our cash flows and property values.

The bankruptcy of, or a downturn in the business of, any of our major tenants causing them to reject their leases, or not renew their leases as they expire, or renew at lower rental rates may adversely affect our cash flows and property values. Furthermore, the impact of vacated anchor space and the potential reduction in customer traffic may adversely impact the balance of tenants at the center.

Certain of our tenants have experienced financial difficulties and have filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code ("Chapter 11 Bankruptcy"). Pursuant to bankruptcy law, tenants have the right to reject their leases. In the event the tenant exercises this right, the landlord generally has the right to file a claim for lost rent equal to the greater of either one year's rent (including tenant expense reimbursements) for remaining terms greater than one year, or 15% of the rent remaining under the balance of the lease term, but not to exceed three years rent. Actual amounts to be received in satisfaction of those claims will be subject to the tenant's final plan of reorganization and the availability of funds to pay its creditors.

Since January 1, 2004, there have been three significant tenant bankruptcies within our portfolio:

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On January 14, 2004, KB Toys (“KB”) filed for protection under Chapter 11 Bankruptcy. KB operated in five locations in our core portfolio totaling approximately 41,000 square feet. Rental revenues from KB at these locations aggregated \$0.3 million for each of the years ended December 31, 2007, 2006 and 2005, respectively. KB rejected the lease at three of these locations and continues to operate in two of our core portfolio locations but has neither assumed nor rejected these two leases.

On September 27, 2007, the Bombay Company, Inc. (“Bombay”) filed for protection under Chapter 11 Bankruptcy. Bombay operated in one of our core portfolio locations, leasing 8,965 square feet. Rental revenues from Bombay totaled \$0.2 million for the years ended December 31, 2007, 2006 and 2005, respectively. Bombay has rejected the lease at this location.

On June 11, 2007, Tweeter Home Entertainment Group, Inc. (“Tweeter”) filed for protection under Chapter 11 Bankruptcy. Tweeter is operating in one of our core portfolio locations, leasing 12,799 square feet. Rental revenues from Tweeter totaled \$0.3 million, \$0.1 million and \$0.0 million for the years ended December 31, 2007, 2006 and 2005, respectively. Tweeter has neither assumed or rejected the lease.

We could be adversely affected by poor market conditions where properties are geographically concentrated.

Our performance depends on the economic conditions in markets in which our properties are concentrated. We have significant exposure to the New York region, from which we derive 35% of the annual base rents within our Core portfolio. Our operating results could be adversely affected if market conditions, such as an oversupply of space or a reduction in demand for real estate, in this area become more competitive relative to other geographic areas.

Our ability to change our portfolio is limited because real estate investments are illiquid.

Equity investments in real estate are relatively illiquid and, therefore, our ability to change our portfolio promptly in response to changed conditions will be limited. Our board of trustees may establish investment criteria or limitations as it deems appropriate, but currently does not limit the number of properties in which we may seek to invest or on the concentration of investments in any one geographic region. We could change our investment, disposition and financing policies without a vote of our shareholders.

Market interest rates could have an adverse effect on our share price.

One of the factors that may influence the trading price of our Common Shares is the annual dividend rate on our Common Shares as a percentage of its market price. An increase in market interest rates may lead purchasers of our Common Shares to seek a higher annual dividend rate, which could adversely affect the market price of our Common Shares and our ability to raise additional equity in the public markets.

Recent disruptions in the financial markets could affect our ability to obtain debt financing on reasonable terms and have other adverse effects on us.

The United States credit markets have recently experienced significant dislocations and liquidity disruptions which have caused the spreads on prospective debt financings to widen considerably. These circumstances have materially impacted liquidity in the debt markets, making financing terms for borrowers less attractive, and in certain cases have resulted in the unavailability of certain types of debt financing. Continued uncertainty in the credit markets may negatively impact our ability to access additional debt financing at reasonable terms, which may negatively affect our ability to make acquisitions. A prolonged downturn in the credit markets may cause us to seek alternative sources of potentially less attractive financing, and may require us to adjust our business plan accordingly. In addition, these factors may make it more difficult for us to sell properties or may adversely affect the price we receive for properties that we do sell, as prospective buyers may experience increased costs of debt financing or difficulties in obtaining debt financing. These events in the credit markets have also had an adverse effect on other financial markets in the United States, which may make it more difficult or costly for us to raise capital through the issuance of our equity securities. These disruptions in the financial markets may have other adverse effects on us or the economy generally.

We could become highly leveraged, resulting in increased risk of default on our obligations and in an increase in debt service requirements, which could adversely affect our financial condition and results of operations and our ability to pay distributions.

We have incurred, and expect to continue to incur, indebtedness in furtherance of our activities. Neither our Declaration of Trust nor any policy statement formally adopted by our board of trustees limits either the total amount of indebtedness or the specified percentage of indebtedness that we may incur. Accordingly, we could become more highly leveraged, resulting in increased risk of default on our obligations and in an increase in debt service requirements which could adversely affect our financial condition and results of operations and our ability to make distributions.

Our loan agreements contain customary representations, covenants and events of default. Certain loan agreements require us to comply with certain affirmative and negative covenants, including the maintenance of certain debt service coverage and leverage ratios.

Interest expense on our variable debt as of December 31, 2007 would increase by \$1.2 million annually for a 100 basis point increase in interest rates. We may seek additional variable-rate financing if and when pricing and other commercial and financial terms warrant. As such, we would consider hedging against the interest rate risk related to such additional variable-rate debt through interest rate swaps and protection agreements, or other means.

We enter into interest-rate hedging transactions, including interest rate swaps and cap agreements, with counterparties. There can be no guarantee that the financial condition of these counterparties will enable them to fulfill their obligations under these agreements.

We may not be able to renew current leases and the terms of re-letting (including the cost of concessions to tenants) may be less favorable to us than current lease terms.

Upon the expiration of current leases for space located in our properties, we may not be able to re-let all or a portion of that space, or the terms of re-letting (including the cost of concessions to tenants) may be less favorable to us than current lease terms. If we are unable to re-let promptly all or a substantial portion of the space located in our properties or if the rental rates we receive upon re-letting are significantly lower than current rates, our net income and ability to make expected distributions to our shareholders will be adversely affected due to the resulting reduction in rent receipts. There can be no assurance that we will be able to retain tenants in any of our properties upon the expiration of their leases. See “Item 2. Properties – Lease Expirations” in this Annual Report on Form 10-K for additional information as to the scheduled lease expirations in our portfolio.

Possible liability relating to environmental matters.

Under various federal, state and local environmental laws, statutes, ordinances, rules and regulations, as an owner of real property, we may be liable for the costs of removal or remediation of certain hazardous or toxic substances at, on, in or under our property, as well as certain other potential costs relating to hazardous or toxic substances (including government fines and penalties and damages for injuries to persons and adjacent property). These laws may impose liability without regard to whether we knew of, or were responsible for, the presence or disposal of those substances. This liability may be imposed on us in connection with the activities of an operator of, or tenant at, the property. The cost of any required remediation, removal, fines or personal or property damages and our liability therefore could exceed the value of the property and/or our aggregate assets. In addition, the presence of those substances, or the failure to properly dispose of or remove those substances, may adversely affect our ability to sell or rent that property or to borrow using that property as collateral, which, in turn, would reduce our revenues and ability to make distributions.

A property can also be adversely affected either through physical contamination or by virtue of an adverse effect upon value attributable to the migration of hazardous or toxic substances, or other contaminants that have or may have emanated from other properties. Although our tenants are primarily responsible for any environmental damages and claims related to the leased premises, in the event of the bankruptcy or inability of any of our tenants to satisfy any obligations with respect to the property leased to that tenant, we may be required to satisfy such obligations. In addition, we may be held directly liable for any such damages or claims irrespective of the provisions of any lease.

From time to time, in connection with the conduct of our business, and prior to the acquisition of any property from a third party or as required by our financing sources, we authorize the preparation of Phase I environmental reports and, when necessary, Phase II environmental reports, with respect to our properties. Based upon these environmental reports and our ongoing review of our properties, as of the date of this prospectus supplement, we are not aware of any environmental condition with respect to any of our properties that we believe would be reasonably likely to have a material adverse effect on us. There can be no assurance, however, that the environmental reports will reveal all environmental conditions at our properties or that the following will not expose us to material liability in the future:

- The discovery of previously unknown environmental conditions;
- Changes in law;
- Activities of tenants; and
- Activities relating to properties in the vicinity of our properties.

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Changes in laws increasing the potential liability for environmental conditions existing on properties or increasing the restrictions on discharges or other conditions may result in significant unanticipated expenditures or may otherwise adversely affect the operations of our tenants, which could adversely affect our financial condition or results of operations.

Competition may adversely affect our ability to purchase properties and to attract and retain tenants.

There are numerous commercial developers, real estate companies, financial institutions and other investors with greater financial resources than we have that compete with us in seeking properties for acquisition and tenants who will lease space in our properties. Our competitors include other REIT's, financial institutions, insurance companies, pension funds, private companies and individuals. This competition may result in a higher cost for properties that we wish to purchase. In addition, retailers at our properties face increasing competition from outlet malls, discount shopping clubs, internet commerce, direct mail and telemarketing, which could (i) reduce rents payable to us; (ii) reduce our ability to attract and retain tenants at our properties; and (iii) lead to increased vacancy rates at our properties.

We have pursued, and may in the future continue to pursue extensive growth opportunities, which may result in significant demands on our operational, administrative and financial resources.

We have pursued extensive growth opportunities. This expansion has placed significant demands on our operational, administrative and financial resources. The continued growth of our real estate portfolio can be expected to continue to place a significant strain on our resources. Our future performance will depend in part on our ability to successfully attract and retain qualified management personnel to manage the growth and operations of our business and to finance such acquisitions. In addition, acquired properties may fail to operate at expected levels due to the numerous factors that may affect the value of real estate. There can be no assurance that we will have sufficient resources to identify and manage acquired properties or otherwise be able to maintain our historic rate of growth.

Our inability to carry out our growth strategy could adversely affect our financial condition and results of operations.

Our earnings growth strategy is based on the acquisition and development of additional properties, including acquisitions through co-investment programs such as joint ventures. In the context of our business plan, "development" generally means an expansion or renovation of an existing property. The consummation of any future acquisitions will be subject to satisfactory completion of our extensive valuation analysis and due diligence review and to the negotiation of definitive documentation. We cannot be sure that we will be able to implement our strategy because we may have difficulty finding new properties, negotiating with new or existing tenants or securing acceptable financing.

Acquisitions of additional properties entail the risk that investments will fail to perform in accordance with expectations, including operating and leasing expectations. Redevelopment is subject to numerous risks, including risks of construction delays, cost overruns or uncontrollable events that may increase project costs, new project commencement risks such as the receipt of zoning, occupancy and other required governmental approvals and permits, and the incurrence of development costs in connection with projects that are not pursued to completion.

A component of our growth strategy is through private-equity type investments made through our RCP Venture. These include investments in operating retailers. The inability of the retailers to operate profitably would have an adverse impact on income realized from these investments.

Our board of trustees may change our investment policy without shareholder approval.

Our board of trustees will determine our investment and financing policies, our growth strategy and our debt, capitalization, distribution, acquisition, disposition and operating policies. Our board of trustees may establish investment criteria or limitations as it deems appropriate, but currently does not limit the number of properties in which we may seek to invest or on the concentration of investments in any one geographic region. Although our board of trustees has no present intention to revise or amend our strategies and policies, it may do so at any time without a vote by our shareholders. Accordingly, our shareholders' control over changes in our strategies and policies is limited to the election of trustees, and changes made by our board of trustees may not serve the interests of all of our shareholders and could adversely affect our financial condition or results of operations, including our ability to distribute cash to shareholders or qualify as a REIT.

There can be no assurance we have qualified or will remain qualified as a REIT for federal income tax purposes.

We believe that we have met the requirements for qualification as a REIT for federal income tax purposes beginning with our taxable year ended December 31, 1993, and we intend to continue to meet these requirements in the future. However, qualification as a REIT involves the application of highly technical and complex provisions of the Internal Revenue Code, for which there are only limited judicial or administrative interpretations. No assurance can be given that we have qualified or will remain qualified as a REIT. The Internal Revenue Code provisions and income tax regulations applicable to REIT's are more complex than those applicable to corporations. The determination of various factual matters and circumstances not entirely within our control may affect our ability to continue to qualify as a REIT. In addition, no assurance can be given that legislation, regulations, administrative interpretations or court decisions will not significantly change the requirements for qualification as a REIT or the federal income tax consequences of such qualification. If we do not qualify as a REIT, we would not be allowed a deduction for distributions to shareholders in computing our net taxable income. In addition, our income would be subject to tax at the regular corporate rates. We also could be disqualified from treatment as a REIT for the four taxable years following the year during which qualification was lost. Cash available for distribution to our shareholders would be significantly reduced for each year in which we do not qualify as a REIT. In that event, we would not be required to continue to make distributions. Although we currently intend to continue to qualify as a REIT, it is possible that future economic, market, legal, tax or other considerations may cause us, without the consent of the shareholders, to revoke the REIT election or to otherwise take action that would result in disqualification.

Distribution requirements imposed by law limit our operating flexibility.

To maintain our status as a REIT for federal income tax purposes, we are generally required to distribute to our shareholders at least 90% of our taxable income for that calendar year. Our taxable income is determined without regard to any deduction for dividends paid and by excluding net capital gains. To the extent that we satisfy the distribution requirement, but distribute less than 100% of our taxable income, we will be subject to federal corporate income tax on our undistributed income. In addition, we will incur a 4% nondeductible excise tax on the amount, if any, by which our distributions in any year are less than the sum of (i) 85% of our ordinary income for that year; (ii) 95% of our capital gain net income for that year and; (iii) 100% of our undistributed taxable income from prior years. We intend to continue to make distributions to our shareholders to comply with the distribution requirements of the Internal Revenue Code and to reduce exposure to federal income and nondeductible excise taxes. Differences in timing between the receipt of income and the payment of expenses in determining our income and the effect of required debt amortization payments could require us to borrow funds on a short-term basis to meet the distribution requirements that are necessary to achieve the tax benefits associated with qualifying as a REIT.

Uninsured losses or a loss in excess of insured limits could adversely affect our financial condition.

We carry comprehensive liability, fire, extended coverage and rent loss insurance on most of our properties, with policy specifications and insured limits customarily carried for similar properties. However, with respect to those properties where the leases do not provide for abatement of rent under any circumstances, we generally do not maintain rent loss insurance. In addition, there are certain types of losses, such as losses resulting from wars, terrorism or acts of God that generally are not insured because they are either uninsurable or not economically insurable. Should an uninsured loss or a loss in excess of insured limits occur, we could lose capital invested in a property, as well as the anticipated future revenues from a property, while remaining obligated for any mortgage indebtedness or other financial obligations related to the property. Any loss of these types would adversely affect our financial condition.

Limits on ownership of our capital shares.

For the Company to qualify as a REIT for federal income tax purposes, among other requirements, not more than 50% of the value of our capital shares may be owned, directly or indirectly, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) during the last half of each taxable year after 1993, and such capital shares must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year (in each case, other than the first such year). Our Declaration of Trust includes certain restrictions regarding transfers of our capital shares and ownership limits that are intended to assist us in satisfying these limitations. These restrictions and limits may not be adequate in all cases, however, to prevent the transfer of our capital shares in violation of the ownership limitations. The ownership limit discussed above may have the effect of delaying, deferring or preventing someone from taking control of us.

Actual or constructive ownership of our capital shares in excess of the share ownership limits contained in our Declaration of Trust would cause the violative transfer or ownership to be null and void from the beginning and subject to purchase by us at a price equal to the lesser of (i) the price stipulated in the challenged transaction; and (ii) the fair market value of such shares (determined in accordance with the rules set forth in our declaration of trust). As a result, if a violative transfer were made, the recipient of the shares would not acquire any economic or voting rights attributable to the transferred shares. Additionally, the constructive ownership rules for these limits are complex and groups of related individuals or entities may be deemed a single owner and consequently in violation of the share ownership limits.

Adverse legislative or regulatory tax changes could have an adverse effect on us.

There are a number of issues associated with an investment in a REIT that are related to the federal income tax laws, including, but not limited to, the consequences of failing to continue to qualify as a REIT. At any time, the federal income tax laws governing REIT's or the administrative interpretations of those laws may be amended. Any of those new laws or interpretations may take effect retroactively and could adversely affect us or our shareholders. Recently enacted legislation reduces tax rates applicable to certain corporate dividends paid to most domestic noncorporate shareholders. REIT dividends generally are not eligible for reduced rates because a REIT's income generally is not subject to corporate level tax. As a result, investment in non-REIT corporations may be viewed as relatively more attractive than investment in REIT's by domestic noncorporate investors. This could adversely affect the market price of the Company's shares.

Concentration of ownership by certain investors.

Ten institutional shareholders own 5% or more individually, and 67.9% in the aggregate, of our Common Shares. A significant concentration of ownership may allow an investor to exert a greater influence over our management and affairs and may have the effect of delaying, deferring or preventing a change in control of us.

Restrictions on a potential change of control.

Our Board of Trustees is authorized by our Declaration of Trust to establish and issue one or more series of preferred shares without shareholder approval. We have not established any series of preferred shares. However, the establishment and issuance of a series of preferred shares could make more difficult a change of control of us that could be in the best interest of the shareholders.

In addition, we have entered into an employment agreement with our Chief Executive Officer and severance agreements are in place with our senior vice presidents which provide that, upon the occurrence of a change in control of us and either the termination of their employment without cause (as defined) or their resignation for good reason (as defined), those executive officers would be entitled to certain termination or severance payments made by us (which may include a lump sum payment equal to defined percentages of annual salary and prior years' average bonuses, paid in accordance with the terms and conditions of the respective agreement), which could deter a change of control of us that could be in our best interest.

The loss of a key executive officer could have an adverse effect on us.

Our success depends on the contribution of key management members. The loss of the services of Kenneth F. Bernstein, President and Chief Executive Officer, or other key executive-level employees could have a material adverse effect on our results of operations. We have entered into an employment agreement with Mr. Bernstein; however, it could be terminated by Mr. Bernstein. We have not entered into employment agreements with other key executive level employees.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES.

SHOPPING CENTER PROPERTIES

The discussion and tables in this Item 2 include properties held through consolidated and unconsolidated joint ventures in which we own a partial interest (“Consolidated Joint Venture Portfolio” and Unconsolidated Joint Venture Portfolio”, respectively). Except where noted, it does not include our partial interest in 25 anchor-only leases with Kroger and Safeway supermarkets. These are detailed separately within this Item 2 as the majority of these properties are free-standing and all are triple-net leases.

As of December 31, 2007, we owned and operated 51 commercial properties as part of our core portfolio and opportunity fund portfolios. The properties are primarily neighborhood and community shopping centers, mixed-use centers and one multi-family property. Ten of these properties are currently under redevelopment. Our shopping centers, which total approximately 7.5 million square feet of gross leaseable area (“GLA”), are located in 13 states and are generally well-established, anchored community and neighborhood shopping centers. The operating properties are diverse in size, ranging from approximately 10,000 to 875,000 square feet with an average size of 150,000 square feet. As of December 31, 2007, our core portfolio and the opportunity fund portfolios (excluding properties under redevelopment) were 94.9% and 93.7% occupied, respectively. Our shopping centers are typically anchored by supermarkets or value-oriented retail.

We had 545 leases as of December 31, 2007. A majority of our rental revenues were from national tenants. A majority of the income from the properties consists of rent received under long-term leases. These leases generally provide for the payment of fixed minimum rent monthly in advance and for the payment by tenants of a pro-rata share of the real estate taxes, insurance, utilities and common area maintenance of the shopping centers. Minimum rents and expense reimbursements accounted for approximately 84% of our total revenues for the year ended December 31, 2007.

As of December 31, 2007, approximately 35% of our existing leases also provided for the payment of percentage rents either in addition to, or in place of, minimum rents. These arrangements generally provide for payment to us of a certain percentage of a tenant’s gross sales in excess of a stipulated annual amount. Percentage rents accounted for approximately 1% of the total 2007 revenues of the Company.

Seven of our shopping center properties are subject to long-term ground leases in which a third party owns and has leased the underlying land to us. We pay rent for the use of the land at seven locations and are responsible for all costs and expenses associated with the building and improvements at all seven locations.

No individual property contributed in excess of 10% of our total revenues for the years ended December 31, 2007, 2006 and 2005. Reference is made to our consolidated financial statements beginning on page F-1 of this Annual Report on form 10-K for information on the mortgage debt pertaining to our properties. The following sets forth more specific information with respect to each of our shopping centers at December 31, 2007:

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Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy (1) % 12/31/07	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
Core Portfolio						
New York Region						
Connecticut						
239 Greenwich Avenue	Greenwich	1998 (A)	Fee	16,834(3)	100%	Restoration Hardware 2014/2024 Coach 2016/2021
New Jersey						
Elmwood Park Shopping Center	Elmwood Park	1998 (A)	Fee	149,491	100%	A&P 2017/2052 Walgreen's 2022/2062
A&P Shopping Plaza	Boonton	2006 (A)	Fee	62,908	100%	A&P 2024/2069
New York						
Village Commons Shopping Center	Smithtown	1998 (A)	Fee	87,169	98%	Daffy's 2008/2028
Branch Shopping Plaza	Smithtown	1998 (A)	LI (4)	125,751	99%	A&P 2013/2028 CVS 2010/—
Amboy Road	Staten Island	2005 (A)	LI (4)	60,090	100%	A&P/Waldbaum's 2028/— Duane Reade 2008/2018
Bartow Avenue	Bronx	2005 (C)	Fee	14,676	87%	Sleepy's 2009/2014
Pacesetter Park Shopping Center	Pomona	1999 (A)	Fee	96,698	93%	Stop & Shop 2020/2040
2914 Third Avenue	Bronx	2006 (A)	Fee	42,400	79%	Dr. J's 2021/—
West Shore Expressway	Staten Island	2007 (A)	Fee	55,000	100%	LA Fitness 2021/—
West 54 th Street	Manhattan	2007 (A)	Fee	9,945	82%	Stage Deli 2011/—
Crossroads Shopping Center	White Plains	1998 (A)	JV (7)	310,624	97%	A&P/Waldbaum's 2012/2032 Kmart 2012/2032 B. Dalton 2012/2022 Modell's 2009/2019 Pier 1 2012/— Pay Half 2007/—
Total New York Region				1,031,586	97%	
New England						
Connecticut						
Town Line Plaza	Rocky Hill	1998 (A)	Fee	206,356(2)	99%	Stop & Shop 2023/2063 Wal-Mart(2)
Massachusetts						
Methuen Shopping Center	Methuen	1998 (A)	LI/Fee (4)	130,021	100%	DeMoulas Market 2015/2020 Wal-Mart 2012/2052
Crescent Plaza	Brockton	1984 (A)	Fee	218,141	99%	Shaw's 2012/2042 Home Depot 2021/2056
New York						
New Loudon Center	Latham	1982 (A)	Fee	255,826	100%	Price Chopper 2015/2035 Marshall's 2014/2029 Bon Ton 2014/2034 Raymour and Flanigan 2019/2034 AC Moore 2009/2024
Rhode Island						
Walnut Hill Plaza	Woonsocket	1998 (A)	Fee	284,717	89%	Shaw's 2013/2028 Sears 2008/2033 CVS 2009/2014
Vermont						
The Gateway Shopping Center	South Burlington	1999 (A)	Fee	101,784	96%	Shaw's 2024/2053
Total New England Region				1,196,845	97%	

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Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy (1) % 12/31/07	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
Midwest						
Illinois						
Hobson West Plaza	Naperville	1998 (A)	Fee	98,908	98%	Bobak's Market & Restaurant 2012/2032
Clark Diversey	Chicago	2006 (A)	Fee	19,265	100%	Papyrus 2010/2015 Starbucks 2010/2015 Nine West 2009/— The Vitamin Shoppe 2014/2024
Indiana						
Merrillville Plaza	Merrillville	1998 (A)	Fee	235,685	96%	TJ Maxx 2009/2014 JC Penney 2008/2018 Office Max 2008/2028 K&G 2017/2027 Pier 1 2009/— David's Bridal 2010/2020
Michigan						
Bloomfield Town Square	Bloomfield Hills	1998 (A)	Fee	232,181	98%	TJ Maxx 2009/2014 Marshalls 2011/2026 Home Goods 2010/2020 Circuit City 2023/2038 Office Max 2010/2025
Ohio						
Mad River Station	Dayton	1999 (A)	Fee	155,838(6)	81%	Babies 'R' Us 2010/2020 Office Depot 2010/— Pier 1 2010/—
Total Midwest Region				<u>741,877</u>	<u>94%</u>	
Mid-Atlantic						
New Jersey						
Marketplace of Absecon	Absecon	1998 (A)	Fee	105,135	95%	Acme 2015/2055 Eckerd Drug 2020/2040
Ledgewood Mall	Ledgewood	1983 (A)	Fee	517,151	89%	Wal-Mart 2019/2049 Macy's 2010/2025 The Sport's Authority 2012/2037 Circuit City 2020/2040 Marshalls 2014/2034 Ashley Furniture 2010/2020 Barnes and Noble 2010/2035
Delaware						
Brandywine Town Center	Wilmington	2003(A)	JV (10)	874,908	98%	Drexel Heritage 2016/2026 Michaels 2011/2026 Old Navy (The Gap) 2011/2016 PetSmart 2017/2042 Thomasville Furniture 2011/2021 Access Group 2015/2025 Bed, Bath & Beyond 2014/2029 Dick's Sporting Goods 2013/2028 Lowe's Home Centers 2018/2048 Regal Cinemas 2017/2037 Target 2018/2058 TransUnion Settlement 2013/2018 Lane Home Furnishings 2015/2030 MJM Designer 2015/2030 World Market 2015/— Christmas Tree Shops 2028/2048 Target Expansion 2011/2363
Market Square Shopping Center	Wilmington	2003(A)	JV (10)	102,662	89%	TJ Maxx 2011/2016 Trader Joe's 2013/2028
Naamans Road	Wilmington	2006 (C)	LI/JV (10) (4)	19,970	100%	Tweeters 2026/2046
Pennsylvania						

Blackman Plaza	Wilkes-Barre	1968 (C)	Fee	125,264	93%	Kmart 2009/2049 Eckerd 2016/—
Mark Plaza	Edwardsville	1968 (C)	LI/Fee (4)	216,401	93%	Redner's Markets 2018/2028 Kmart 2009/2049

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Shopping Center	Location	Year Constructed (C) Acquired (A)	Ownership Interest	GLA	Occupancy (1)% 12/31/07	Anchor Tenants Current Lease Expiration/ Lease Option Expiration
Plaza 422	Lebanon	1972 (C)	Fee	155,149	69%	Home Depot 2028/2058
Route 6 Mall	Honesdale	1994 (C)	Fee	175,505	100%	Kmart 2020/2070 Eckerd 2011/2026 Fashion Bug 2016/—
Chestnut Hill (13)	Philadelphia	2006 (A)	Fee	40,570	100%	Borders 2010/2020 Express 2009/— TJ Maxx 2010/2020
Abington Towne Center	Abington	1998 (A)	Fee	216,355(5)	99%	Target (5)
Total Mid-Atlantic Region				<u>2,549,070</u>	<u>94%</u>	
Total Core Properties				<u>5,519,378</u>	<u>95%</u>	
Opportunity Fund Portfolio						
Fund I Properties						
Ohio						
Granville Centre	Columbus	2002(A)	JV (8)	134,997	41%	Lifestyle Family Fitness 2017/2027
Virginia						
Haygood Shopping Center	Virginia Beach	2004(A)	JV (8)	178,533	93%	Eckerd Drug 2009/— Farm Fresh 2026/2101 Marshalls 2017/—
New York						
Tarrytown Shopping Center	Westchester	2004 (A)	JV (8)	35,291	85%	Walgreen's 2080/—
VARIOUS REGIONS						
Kroger/Safeway Portfolio	Various	2003 (A)	JV (8)	1,018,100	100%	25 Kroger/Safeway Supermarkets 2009/—
Total Fund I Properties				<u>1,366,921</u>	<u>93%</u>	
Fund II Properties						
Illinois						
Oakbrook	Oakbrook	2005 (A)	JV (4) (9)	112,000	100%	Neiman Marcus 2011/2036
New York						
Liberty Avenue	New York	2005 (A)	JV (4) (9)	17,088	100%	CVS 2032/2052
216th Street	New York	2005 (A)	JV (9)	60,000	100%	NY Dept. of Citywide Admin Svcs 2027/2042
Total Fund II Properties				<u>189,088</u>	<u>100%</u>	
Total Opportunity Fund Operating Properties				<u>1,556,009</u>	<u>94%</u>	
Properties under Redevelopment						
Sterling Heights Shopping Center	Detroit	2004(A)	JV (8)	154,835	69%	Burlington Coat Factory 2024/— Rite-Aid 2026/2046
161st Street	Bronx	2005(A)	JV (9)	223,521	87%	City of New York 2011/—
400 E. Fordham Road	Bronx	2004(A)	JV (9)	-(11)	-(11)	
Pelham Manor Shopping Plaza						
	Westchester	2004(A)	LI/JV (4) (9)	-(11)	-(11)	
Sherman Avenue	New York	2005(A)	JV (9)	-(11)	-(11)	
CityPoint	Brooklyn	2007(A)	JV (9)	-(11)	-(11)	
Atlantic Ave	Brooklyn	2007(A)	JV (9)	-(11)	-(11)	
Canarsie Plaza	Brooklyn	2007(A)	JV (9)	-(11)	-(11)	
Westport	Westport	2007(A)	JV (12)	-(11)	-(11)	
Sheepshead Bay	Brooklyn	2007(A)	JV (12)	-(11)	-(11)	
Total Redevelopment Properties				<u>378,356</u>	<u>80%</u>	

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Notes:

- (1) Does not include space leased for which rent had not yet commenced as of December 31, 2007.
- (2) Includes a 97,300 square foot Wal-Mart which is not owned us.
- (3) In addition to the 16,834 square feet of retail GLA, this property also has 21 apartments comprising 14,434 square feet.
- (4) We are a ground lessee under a long-term ground lease.
- (5) Includes a 157,616 square foot Target Store that is not owned by the Company.
- (6) The GLA for this property includes 28,205 square feet of office space.
- (7) We have a 49% investment in this property.
- (8) We have invested in this asset through Fund I.
- (9) We have invested in this asset through Fund II.
- (10) We have invested in this asset with Ginsburg Development Corp. (GDC).
- (11) Under redevelopment.
- (12) We have invested in this asset through Fund III.
- (13) Property consists of two buildings.

MAJOR TENANTS

No individual retail tenant accounted for more than 6.3% of minimum rents for the year ended December 31, 2007 or 8.7% of total leased GLA as of December 31, 2007. The following table sets forth certain information for the 20 largest retail tenants based upon minimum rents in place as of December 31, 2007. The table includes leases related to our partial interest in 25 anchor-only leases with Kroger and Safeway supermarkets. The amounts below include our pro-rata share of GLA and annualized base rent for our partial ownership interest in properties (GLA and rent in thousands):

Retail Tenant	Number of Stores in Portfolio	Total GLA	Annualized Base Rent (1)	Percentage of Total Represented by Retail Tenant	
				Total Portfolio GLA (2)	Annualized Base Rent (2)
A&P (Waldbaum's)	5	216	\$ 3,769	4.3%	6.3%
Albertson's (Shaw's, Acme)	4	220	3,013	4.4%	5.0%
T.J. Maxx (T.J. Maxx, Marshalls, Homegoods)	8	237	1,853	4.7%	3.1%
Sears (Sears, Kmart)	5	440	1,633	8.7%	2.7%
Wal-Mart	2	210	1,515	4.1%	2.5%
Ahold (Stop & Shop)	2	118	1,299	2.3%	2.2%
Kroger (3)	12	156	1,046	3.1%	1.8%
Safeway (4)	13	132	1,040	2.6%	1.7%
Home Depot	2	211	1,010	4.2%	1.7%
Circuit City	2	60	950	1.2%	1.6%
Price Chopper	1	77	804	1.5%	1.3%
Restoration Hardware	1	9	781	0.2%	1.3%
Sleepy's	5	36	683	0.7%	1.1%
Federated (Macy's)	1	73	651	1.4%	1.1%
Walgreens	2	21	615	0.4%	1.0%
CVS	4	31	562	0.6%	0.9%
Payless Shoesource	9	29	552	0.6%	0.9%
Limited Brands	1	13	510	0.3%	0.9%
JC Penney	1	50	495	1.0%	0.8%
Borders	1	19	482	0.4%	0.8%
Total	81	2,358	\$ 23,263	46.7%	38.7%

Notes:

- (1) Base rents do not include percentage rents (except where noted), additional rents for property expense reimbursements, and contractual rent escalations due after December 31, 2007.
- (2) Represents total GLA and annualized base rent for our retail properties including our pro-rata share of joint venture properties.
- (3) Kroger has sub-leased four of these locations to supermarket tenants, two locations to a non-supermarket tenant and ceased operations at one other location. Kroger is obligated to pay rent through the full term of these leases, which expire in 2009.
- (4) Safeway has sub-leased seven of these locations to supermarket tenants, one location to a non-supermarket tenant and ceased operations at one other location. Safeway is obligated to pay rent through the full term of all these leases, which expire in 2009.

[Table of Contents](#)**LEASE EXPIRATIONS**

The following table shows scheduled lease expirations for retail tenants in place as of December 31, 2007, assuming that none of the tenants exercise renewal options. (GLA and Annualized Base Rent in thousands):

Core Portfolio:

Leases maturing in	Number of Leases	Annualized Base Rent (1)		GLA	
		Current Annual Rent	Percentage of Total	Square Feet	Percentage of Total
2008	106	\$ 8,134	11%	476	10%
2009	78	6,176	9%	550	11%
2010	65	6,259	9%	526	11%
2011	52	7,416	10%	330	7%
2012	42	5,534	8%	505	10%
2013	20	4,463	6%	266	5%
2014	24	4,806	7%	288	6%
2015	20	5,558	8%	336	7%
2016	12	1,762	2%	82	2%
2017	20	4,701	7%	212	4%
Thereafter	39	16,377	23%	1,414	27%
Total	478	\$ 71,186	100%	4,985	100%

Opportunity Fund Portfolios:

Leases maturing in	Number of Leases	Annualized Base Rent (1)		GLA	
		Current Annual Rent	Percentage of Total	Square Feet	Percentage of Total
2008	23	\$ 523	3%	47	2%
2009	28	7,480	37%	1,036	60%
2010	4	190	1%	9	1%
2011	11	5,037	25%	290	16%
2012	8	748	4%	44	2%
2014	6	341	2%	14	1%
2015	2	47	0%	3	0%
2016	1	111	1%	8	0%
2017	3	741	4%	66	4%
Thereafter	9	4,668	23%	242	14%
Total	95	\$ 19,886	100%	1,759	100%

Note:

- (1) Base rents do not include percentage rents, additional rents for property expense reimbursements, nor contractual rent escalations due after December 31, 2007.

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GEOGRAPHIC CONCENTRATIONS

The following table summarizes our retail properties by region as of December 31, 2007. (GLA and Annualized Base Rent in thousands):

Region	GLA (1)	Occupied % (2)	Annualized Base Rent (2)	Annualized Base Rent per Occupied Square Foot	Percentage of Total Represented by Region	
					GLA	Annualized Base Rent
Core Properties:						
New York Region (3)	1,032	97%	\$ 24,654	\$ 24.67	19%	35%
New England	1,197	97%	10,167	9.60	22%	14%
Midwest	742	94%	9,455	13.57	13%	13%
Mid-Atlantic	2,549	94%	26,910	12.07	46%	38%
Total core properties	<u>5,520</u>	<u>95%</u>	<u>\$ 71,186</u>	<u>\$ 14.28</u>	<u>100%</u>	<u>100%</u>
Opportunity Fund Properties:						
Midwest (4)	247	68%	\$ 1,488	\$ 8.86	16%	10%
Mid-Atlantic (5)	179	93%	1,768	10.69	12%	12%
New York Region (6)	112	95%	4,095	38.23	7%	28%
Various (Kroger/Safeway Portfolio) (7)	<u>1,018</u>	<u>100%</u>	<u>7,363</u>	<u>7.23</u>	<u>65%</u>	<u>50%</u>
Total operating opportunity fund properties	<u>1,556</u>	<u>94%</u>	<u>\$ 14,714</u>	<u>\$ 10.09</u>	<u>100%</u>	<u>100%</u>
Fund Redevelopment Properties:						
Midwest (8)	155	69%	\$ 641	\$ 6.02	40%	12%
New York Region (9)	224	87%	4,531	23.27	60%	88%
Total Fund redevelopment properties	<u>379</u>	<u>80%</u>	<u>\$ 5,172</u>	<u>\$ 17.16</u>	<u>100%</u>	<u>100%</u>

Notes:

- (1) Property GLA includes a total of 255,000 square feet, which is not owned by us. This square footage has been excluded for calculating annualized base rent per square foot.
- (2) The above occupancy and rent amounts do not include space which is currently leased, but for which rent payment had not yet commenced as of December 31, 2007.
- (3) We have a 49% interest in two partnerships, which together, own the Crossroads Shopping Center.
- (4) We have a 37.78% interest in future earnings and distributions from Fund I, which owns one property, and a 20% interest in Fund II, which owns one property.
- (5) We have a 37.78% interest in future earnings and distributions from Fund I, which has a 50% interest in a property.
- (6) We have a 37.78% interest in future earnings and distributions from Fund I, which owns one property, and a 20% interest in Fund II, which has a 98.6% interest in two properties.
- (7) Fund I portfolio of 25 triple-net, anchor-only leases with Kroger and Safeway supermarkets.
- (8) We have a 37.78% interest in future earnings and distributions from Fund I, which has a 50% interest in one property.
- (9) We have a 20% interest in Fund II, which has a 98.6% interest in one property.

KROGER/SAFEGWAY PORTFOLIO

In January of 2003, Fund I formed a joint venture (the “Kroger/Safeway JV”) with an affiliate of real estate developer and investor AmCap Incorporated (“AmCap”) for the purpose of acquiring a portfolio of twenty-five supermarket leases for \$48.9 million inclusive of the closing and other related acquisition costs. The portfolio, which aggregates approximately 1.0 million square feet, consists of 25 anchor-only leases with Kroger (12 leases) and Safeway supermarkets (13 leases). The majority of the properties are free-standing and all are triple-net leases. The Kroger/Safeway JV acquired the portfolio subject to long-term ground leases with terms, including renewal options, averaging in excess of 80 years, which are master leased to a non-affiliated entity. The primary lease terms end during 2009 (“Primary Term”). Rental options for the supermarket leases at the end of their Primary Term are at an average rent of \$5.13 per square foot and for ten year increments through 2049. Although there is no obligation for the Kroger/Safeway JV to pay ground rent during the Primary Term, to the extent it exercises an option to renew a ground lease for a property at the end of the Primary Term, it will be obligated to pay an average ground rent of \$1.55 per square foot.

The following table sets forth more specific information with respect to the 25 supermarket leases:

<u>Location</u>	<u>Tenant</u>	<u>Notes</u>	<u>Gross leasable area (“GLA”)</u>	<u>Current rent</u>	<u>Rent upon initial option commencement</u>
Great Bend, KS	Kroger Co.	(1)(5)	48,000	\$ 3.07	\$ 2.40
Cincinnati, OH	Kroger Co.	(7)	32,200	6.90	5.36
Conroe, TX	Kroger Co.	(2)(6)	75,000	5.92	4.60
Harahan, LA	Kroger Co.	(2)(5)	60,000	5.90	4.61
Indianapolis, IN	Kroger Co.	(7)	34,000	4.99	3.87
Irving, TX	Kroger Co.	(4)	43,900	5.57	4.32
Pratt, KS	Kroger Co.	(1)(5)	38,000	4.84	3.78
Roanoke, VA	Kroger Co.	(5)	36,700	11.09	8.62
Shreveport, LA	Kroger Co.	(5)	45,000	8.97	6.96
Wichita, KS	Kroger Co.	(1)(5)	50,000	9.57	7.48
Wichita, KS	Kroger Co.	(1)(6)	40,000	8.92	6.97
Atlanta, TX	Safeway	(3)(5)	31,000	6.23	3.98
Batesville, AR	Safeway	(1)(7)	29,000	8.94	5.72
Benton, AR	Safeway	(1)(7)	33,500	7.36	4.71
Carthage, TX	Safeway	(1)(4)	27,700	6.43	4.12
Little Rock, AR	Safeway	(1)(7)	36,000	10.29	6.58
Longview, WA	Safeway	(4)	48,700	7.01	4.48
Mustang, OK	Safeway	(1)(4)	30,200	6.49	4.15
Roswell, NM	Safeway	(2)(6)	36,300	9.29	5.94
Ruidoso, NM	Safeway	(1)(4)	38,600	9.33	5.97
San Ramon, CA	Safeway	(7)	54,000	7.76	4.96
Springerville, AZ	Safeway	(4)	30,500	7.56	4.83
Tucson, AZ	Safeway	(4)	41,800	7.32	4.68
Tulsa, OK	Safeway	(1)(6)	30,000	7.75	4.96
Cary, NC	Kroger Co.	(3)(4)	48,000	5.86	4.55
	Total		<u>1,018,100</u>		

Notes:

- (1) The tenant is obligated to pay rent pursuant to the lease and has sub-leased this location to a supermarket sub-tenant.
- (2) The tenant is obligated to pay rent pursuant to the lease and has sub-leased this location to a non-supermarket sub-tenant.
- (3) The tenant is currently not operating at this location although they continue to pay rent in accordance with the lease.
- (4) The tenant has exercised its option to renew its lease.
- (5) The tenant has exercised its option to purchase the fee to this property during 2009.
- (6) The tenant has not exercised its option to renew the lease.
- (7) Renewal status pending

ITEM 3. LEGAL PROCEEDINGS:

We are involved in other various matters of litigation arising in the normal course of business. While we are unable to predict with any certainty the amounts involved, management is of the opinion that, when such litigation is resolved, our resulting net liability, if any, will not have a significant effect on our consolidated financial position or results of operations.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS:

No matter was submitted to a vote of security holders through the solicitation of proxies or otherwise during the fourth quarter of 2007.

PART II

ITEM 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCK MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES.

(a) Market Information

The following table shows, for the period indicated, the high and low sales price for our Common Shares as reported on the New York Stock Exchange, and cash dividends declared during the two years ended December 31, 2007 and 2006:

Quarter Ended	High	Low	Dividend Per Share
2007			
March 31, 2007	\$28.14	\$24.12	\$0.2000
June 30, 2007	28.75	25.43	0.2000
September 30, 2007	27.93	21.19	0.2000
December 31, 2007	29.00	24.03	0.4325
2006			
March 31, 2006	\$24.21	\$19.79	\$0.1850
June 30, 2006	23.94	19.51	0.1850
September 30, 2006	26.70	22.70	0.1850
December 31, 2006	27.13	23.81	0.2000

At February 29, 2008, there were 321 holders of record of our Common Shares.

(b) Dividends

We have determined that for 2007, 51% of the total dividends distributed to shareholders represented ordinary income, 15% represented unrecaptured Section 1250 gain and 34% represented Section 1231 gain. Our cash flow is affected by a number of factors, including the revenues received from rental properties, our operating expenses, the interest expense on our borrowings, the ability of lessees to meet their obligations to us and unanticipated capital expenditures. Future dividends paid by us will be at the discretion of the Trustees and will depend on our actual cash flows, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Code and such other factors as the Trustees deem relevant.

(c) Issuer purchases of equity securities

We have an existing share repurchase program that authorizes management, at its discretion, to repurchase up to \$20.0 million of our outstanding Common Shares. Through February 29, 2008, we had repurchased 2.1 million Common Shares at a total cost of \$11.7 million. All of these Common Shares have been subsequently reissued. The program may be discontinued or extended at any time and there is no assurance that we will purchase the full amount authorized. There were no Common Shares repurchased by us during the fiscal year ended December 31, 2007.

(d) Securities authorized for issuance under equity compensation plans

The following table provides information related to our 1999 Share Incentive Plan (the “1999 Plan”), 2003 Share Incentive Plan (the “2003 Plan”) and the 2006 Share Incentive Plan (the “2006 Plan”) as of December 31, 2007:

	Equity Compensation Plan Information		(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column a)
	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted- average exercise price of outstanding options, warrants and rights	
Equity compensation plans approved by security holders	531,738	\$ 9.99	618,041(1)
Equity compensation plans not approved by security holders	—	—	—
Total	531,738	\$ 9.99	618,041(1)

Notes:

- (1) The 1999 Plan authorizes the issuance of options equal to up to 8% of the total Common Shares outstanding from time to time on a fully diluted basis. However, not more than 4,000,000 of the Common Shares in the aggregate may be issued pursuant to the exercise of options and no participant may receive more than 5,000,000 Common Shares during the term of the 1999 Plan. The 2003 Plan authorizes the issuance of options equal to up to 4% of the total Common Shares outstanding from time to time on a fully diluted basis. However, no participant may receive more than 1,000,000 Common Shares during the term of the 2003 Plan. The 2006 Plan authorizes the issuance of a maximum number of 500,000 Common Shares. No participant may receive more than 500,000 Common Shares during the term of the 2006 Plan.

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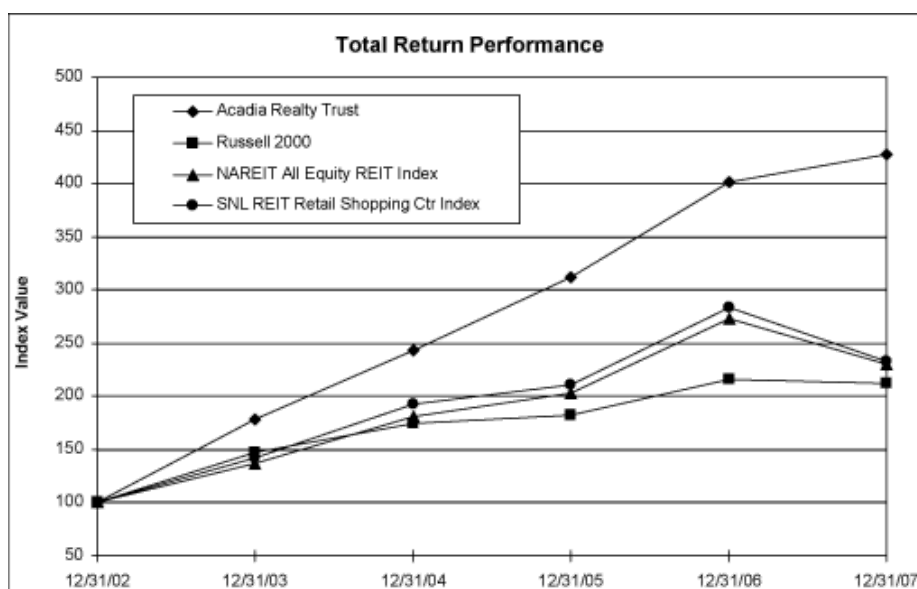
Remaining Common Shares available is as follows:

Outstanding Common Shares as of December 31, 2007	32,184,462
Outstanding OP Units as of December 31, 2007	642,272
Total Outstanding Common Shares and OP Units	32,826,734
12% of Common Shares pursuant to the 1999 and 2003 Plans	3,939,208
Common Shares pursuant to the 2006 Plan	500,000
Total Common Shares available under equity compensation plans	4,439,208
Less: Issuance of Restricted Shares Granted	(1,042,005)
Issuance of Options Granted	(2,779,162)
Number of Common Shares remaining available	618,041

(e) Share Price Performance Graph (1)

The following graph compares the cumulative total shareholder return for our Common Shares for the period commencing December 31, 2002 through December 31, 2007 with the cumulative total return on the Russell 2000 Index (“Russell 2000”), the NAREIT All Equity REIT Index (the “NAREIT”) and the SNL Shopping Center REITs (the “SNL”) over the same period. Total return values for the Russell 2000, the NAREIT, the SNL and the Common Shares were calculated based upon cumulative total return assuming the investment of \$100.00 in each of the Russell 2000, the NAREIT, the SNL and our Common Shares on December 31, 2002, and assuming reinvestment of such dividends. The shareholder return as set forth in the table below is not necessarily indicative of future performance.

Comparison of 5 Year Cumulative Total Return among Acadia Realty Trust, the Russell 2000, the NAREIT and the SNL:



Index	Period Ending					
	12/31/02	12/31/03	12/31/04	12/31/05	12/31/06	12/31/07
Acadia Realty Trust	100.00	178.76	243.71	311.77	401.39	427.32
Russell 2000	100.00	147.25	174.24	182.18	215.64	212.26
NAREIT All Equity REIT Index	100.00	137.13	180.44	202.38	273.34	230.45
SNL REIT Retail Shopping Ctr Index	100.00	141.78	192.62	210.19	282.93	232.94

(1) The information in this section is not “soliciting material,” is not deemed “filed” with the SEC, and is not to be incorporated by reference into any filing of the Trust under the Securities Act or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filing.

ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth, on a historical basis, our selected financial data. This information should be read in conjunction with our audited consolidated financial statements and Management’s Discussion and Analysis of Financial Condition and Results of Operations appearing elsewhere in this Form 10-K. Funds from operations (“FFO”) amounts for the year ended December 31, 2007 have been adjusted as set forth in “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations — Reconciliation of Net Income to Funds from Operations and Adjusted Funds From Operations.”

(dollars in thousands except per share amounts)	Years ended December 31,				
	2007	2006	2005	2004	2003
OPERATING DATA:					
Revenues	\$ 101,569	\$ 95,800	\$ 93,965	\$ 80,283	\$ 76,072
Operating expenses	48,617	42,734	38,453	32,884	31,521
Interest expense	22,775	20,377	16,689	14,525	13,389
Depreciation and amortization	27,506	25,361	24,697	21,607	22,537
Equity in earnings of unconsolidated partnerships	6,619	2,559	21,280	513	985
Minority interest	9,063	5,227	(13,946)	(1,462)	(4,892)
Income tax provision (benefit)	297	(508)	2,140	—	—
Income from continuing operations	18,056	15,622	19,320	10,318	4,718
Income from discontinued operations	5,537	23,391	1,306	9,267	3,135
Income from extraordinary item (1)	3,677	—	—	—	—
Net income	<u>\$ 27,270</u>	<u>\$ 39,013</u>	<u>\$ 20,626</u>	<u>\$ 19,585</u>	<u>\$ 7,853</u>
Basic earnings per share:					
Income from continuing operations	\$ 0.55	\$ 0.48	\$ 0.61	\$ 0.35	\$ 0.18
Income from discontinued operations	0.17	0.72	0.04	0.32	0.12
Income from extraordinary item	0.11	—	—	—	—
Basic earnings per share	<u>\$ 0.83</u>	<u>\$ 1.20</u>	<u>\$ 0.65</u>	<u>\$ 0.67</u>	<u>\$ 0.30</u>
Diluted earnings per share:					
Income from continuing operations	\$ 0.54	\$ 0.48	\$ 0.60	\$ 0.34	\$ 0.18
Income from discontinued operations	0.17	0.70	0.04	0.31	0.11
Income from extraordinary item	0.11	—	—	—	—
Diluted earnings per share	<u>\$ 0.82</u>	<u>\$ 1.18</u>	<u>\$ 0.64</u>	<u>\$ 0.65</u>	<u>\$ 0.29</u>
Weighted average number of Common Shares outstanding					
- basic	32,907	32,502	31,949	29,341	26,640
- diluted	33,309	33,153	32,214	29,912	27,232
Cash dividends declared per Common Share	\$ 1.0325	\$ 0.755	\$ 0.7025	\$ 0.6525	\$ 0.595
BALANCE SHEET DATA:					
Real estate before accumulated depreciation	\$ 854,074	\$ 650,051	\$ 670,817	\$ 561,370	\$ 504,355
Total assets	999,012	851,692	841,204	599,724	518,914
Total mortgage indebtedness	402,903	319,507	382,510	242,527	248,180
Total convertible notes payable	115,000	100,000	—	—	—
Minority interest in Operating Partnership	4,595	8,673	9,204	6,893	7,875
Minority interests in partially-owned affiliates	166,516	105,064	137,086	75,244	37,681
Total equity	240,736	241,119	220,576	216,924	169,734
OTHER:					
Funds from Operations, adjusted for extraordinary item (1)					
(2)	\$ 44,018	\$ 39,953	\$ 35,842	\$ 30,004	\$ 27,664
Cash flows provided by (used in):					
Operating activities	105,165	39,627	50,239	33,885	31,031
Investing activities	(208,869)	(58,890)	(135,470)	(72,860)	(76,552)
Financing activities	87,476	68,359	159,425	40,050	15,454

Notes:

- (1) The extraordinary item represents the Company’s share of estimated extraordinary gain related to its private-equity investment in Albertson’s. The Albertson’s entity has recorded an extraordinary gain in connection with the allocation of purchase price to assets acquired. The Company considers its private-equity investments to be investments in operating businesses as opposed to real estate. Accordingly, all gains and losses from private-equity investments are included in FFO, which management believes provides a more accurate reflection of the operating performance of the Company.
- (2) The Company considers funds from operations (“FFO”) as defined by the National Association of Real Estate Investment Trusts (“NAREIT”) to be an appropriate supplemental disclosure of operating performance for an equity REIT due to its widespread acceptance and use within the REIT and analyst communities. FFO is presented to assist investors in analyzing the performance of the Company. It is helpful as it excludes various items included in net income that are not indicative of the operating performance, such as gains (losses) from sales of depreciated property and depreciation and amortization. However, the Company’s method of calculating FFO may be different from methods used by other REITs and, accordingly, may not be comparable to such other REIT’s. FFO does not represent cash generated from operations as defined by generally accepted

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accounting principles (“GAAP”) and is not indicative of cash available to fund all cash needs, including distributions. It should not be considered as an alternative to net income for the purpose of evaluating the Company’s performance or to cash flows as a measure of liquidity. Consistent with the NAREIT definition, the Company defines FFO as net income (computed in accordance with GAAP), excluding gains (losses) from sales of depreciated property, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures.

ITEM 7. MANagements DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

OVERVIEW

As of December 31, 2007, we operated 76 properties, which we own or have an ownership interest in, within our Core Portfolio or within our Opportunity Funds I, II and III. These properties consist of 75 commercial properties, primarily neighborhood and community shopping centers and mixed-use developments, which are located primarily in the Northeast, Mid-Atlantic and Midwestern regions of the United States and one multi-family property located in Southeast region of the United States. Our Core Portfolio consists of 34 properties comprising approximately 5.5 million square feet. Fund I has 29 properties comprising approximately 1.5 million square feet. Fund II has ten properties, the majority of which are undergoing redevelopment and will have approximately two million square feet upon completion of redevelopment activities. The newly created Fund III has two properties, which are undergoing redevelopment and will have approximately 0.3 million square feet upon completion of redevelopment activities. The majority of our operating income derives from the rental revenues from these properties, including recoveries from tenants, offset by operating and overhead expenses. As our RCP Venture invests in operating companies, we consider these investments to be private-equity, as opposed to real estate investments. Since these are not traditional investments in operating rental real estate, the Operating Partnership invests in these through a taxable REIT subsidiary (“TRS”).

Our primary business objective is to acquire and manage commercial retail properties that will provide cash for distributions to shareholders while also creating the potential for capital appreciation to enhance investor returns. We focus on the following fundamentals to achieve this objective:

- Own and operate a portfolio of community and neighborhood shopping centers and mixed-use properties with a retail component located in markets with strong demographics.
- Generate internal growth within the portfolio through aggressive redevelopment, re-anchoring and leasing activities.
- Generate external growth through an opportunistic yet disciplined acquisition program. The emphasis is on targeting transactions with high inherent opportunity for the creation of additional value through redevelopment and leasing and/or transactions requiring creative capital structuring to facilitate the transactions.
- Partner with private equity investors for the purpose of making investments in operating retailers with significant embedded value in their real estate assets.
- Maintain a strong and flexible balance sheet through conservative financial practices while ensuring access to sufficient capital to fund future growth.

RESULTS OF OPERATIONS

Comparison of the year ended December 31, 2007 (“2007”) to the year ended December 31, 2006 (“2006”)

Revenues

(dollars in millions)	2007	2006	Change	
			\$	%
Minimum rents	\$ 72.1	\$ 63.6	\$ 8.5	13%
Percentage rents	0.6	1.2	(0.6)	(50)%
Expense reimbursements	13.3	14.5	(1.2)	(8)%
Other property income	1.0	0.9	0.1	11%
Management fee income	4.1	5.6	(1.5)	(27)%
Interest income	10.3	8.3	2.0	24%
Other	0.2	1.7	(1.5)	(88)%
Total revenues	<u>\$ 101.6</u>	<u>\$ 95.8</u>	<u>\$ 5.8</u>	<u>6%</u>

The increase in minimum rents was primarily attributable to additional rents following our acquisition of 200 West 54th Street, 145

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East Service Road, 2914 Third Avenue and Chestnut Hill ("2006/2007 Acquisitions") as well as Liberty Avenue and 216th Street being placed in service January 1, 2007 and October 1, 2007, respectively. In addition, minimum rents increased as a result of re-tenanting activities across our portfolio.

Percentage rents decreased primarily as a result of the temporary closing of an anchor tenant at Fordham Place during the construction period in 2007.

Expense reimbursements for common area maintenance ("CAM") decreased \$0.2 million. During 2007, we completed our multi-year review of CAM billings and resolved the majority of all outstanding CAM billing issues with our tenants. As a result, 2007 was adversely impacted by charges related to settlements and related adjustments totaling \$1.0 million. This was partially offset by higher CAM recovery resulting from increased snow removal costs in 2007. Real estate tax reimbursements decreased \$1.0 million, primarily as a result of lower real estate tax expense in 2007 and a \$0.4 million real estate tax charge to an anchor tenant for previous years billed during 2006.

Management fee income decreased \$1.5 million primarily as a result of lower fees earned in connection with Klaff management contracts following the disposition of certain assets in 2006 and 2007 and lower management fees from our investments in unconsolidated affiliates.

The increase in interest income was attributable to interest income on notes and other advances receivable originated in the second half of 2006 and 2007 as well as higher balances in interest earning assets in 2007.

The decrease in other income was primarily attributable to a \$1.1 million reimbursement of certain fees by the institutional investors of Fund I for the Brandywine Portfolio in 2006 as well as \$0.5 million of additional income related to termination of interest rate swap agreements.

Operating Expenses

(dollars in millions)	2007	2006	Change	
			\$	%
Property operating	\$ 15.9	\$ 12.8	\$ 3.1	24%
Real estate taxes	9.7	10.1	(0.4)	(4)%
General and administrative	23.0	19.8	3.2	16%
Depreciation and amortization	27.5	25.4	2.1	8%
Total operating expenses	\$ 76.1	\$ 68.1	\$ 8.0	12%

The increase in property operating expenses was primarily the result of the 2006/2007 Acquisitions, Liberty Avenue being placed in service January 1, 2007 and higher snow removal costs of \$1.0 million in 2007.

The decrease in real estate taxes was due to tax refunds and adjustments of estimates of \$0.6 million recorded in 2007 and \$0.6 million related to the capitalization of construction period real estate taxes at a property that was operating in 2006. These decreases were offset by increased real estate tax expense of \$0.8 million following the 2006/2007 Acquisitions as well as general increases across the portfolio.

The variance in general and administrative expense was attributable to increased compensation expense, including share based compensation of \$4.7 million for additional personnel hired in the second half of 2006 and in 2007 as well as increases in existing employee salaries. In addition, there was an increase of \$0.7 million for other overhead expenses following the expansion of our infrastructure related to increased fund investments and asset management services. These factors were partially offset by an increase in capitalized construction salaries due to higher redevelopment activities in 2007.

Depreciation expense increased \$1.3 million in 2007. This was principally a result of increased depreciation expense following the 2006/2007 Acquisitions and Liberty Avenue and 216th Street being placed in service during 2007. Amortization expense increased \$0.8 million in 2007. This was primarily attributable to increased amortization of loan costs following our convertible debt issuances in December 2006 and January 2007 as well as increased amortization of loan costs from financing activity in late 2006 and 2007.

Other

(dollars in millions)	2007	2006	Change	
			\$	%
Equity in earnings of unconsolidated affiliates	\$ 6.6	\$ 2.6	\$ 4.0	153%
Interest expense	(22.8)	(20.4)	(2.4)	(12)%
Minority interest	9.1	5.2	3.9	75%
Income taxes	0.3	(0.5)	(0.8)	(160)%
Income from discontinued operations	5.5	23.4	(17.9)	(76)%
Extraordinary item	3.7	—	3.7	100%

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Equity in earnings of unconsolidated affiliates increased as a result of our distributions in excess of our invested capital from both our Albertson's investment of \$2.4 million and our investment in Hitchcock Plaza of \$2.4 million. These increases were offset by a decrease in our pro rata share of earnings from our Mervyns investment of \$1.3 million.

Interest expense increased \$2.4 million in 2007. This was the result of a \$4.9 million increase attributable to higher average outstanding borrowings in 2007 and \$0.4 million of costs associated with a loan payoff in 2007. These increases were offset by a \$2.9 million decrease resulting from a lower average interest rate on the portfolio mortgage debt in 2007.

The variance in minority interest is primarily attributable to the minority partners' share of increased fund level fees partially offset by \$2.6 million representing the minority partners' share of the income reported from the equity in earnings of unconsolidated affiliates.

The variance in income tax expense primarily relates to income tax on our share of income and losses from Albertson's and Mervyns.

Income from discontinued operations represents activity related to properties sold in 2007 and 2006.

The extraordinary gain in 2007 relates to our share of the extraordinary gain, net of income taxes and minority interest, from our Albertson's investment. This gain was characterized as extraordinary consistent with the accounting treatment by Albertson's which reflected the excess of fair value of net assets acquired over the purchase price as an extraordinary gain.

Comparison of the year ended December 31, 2006 ("2006") to the year ended December 31, 2005 ("2005")

The Brandywine Portfolio operations were consolidated as part of Fund I for the year ended December 31, 2005. Subsequent to the recapitalization and conversion of interests from Fund I to GDC in January 2006, the Brandywine Portfolio is accounted for under the equity method of accounting for the year ended December 31, 2006. In the following tables, we have excluded the Brandywine Portfolio operations for the year ended December 31, 2005 for purposes of comparability with the year ended December 31, 2006.

Revenues						Change from	
	2006	2005 As Reported	Brandywine Portfolio	2005 Adjusted	\$	%	
(dollars in millions)							
Minimum rents	\$ 63.6	\$ 69.4	\$ (14.0)	\$ 55.4	\$ 8.2	15%	
Percentage rents	1.2	1.3	(0.6)	0.7	0.5	71%	
Expense reimbursements	14.5	14.4	(2.2)	12.2	2.3	19%	
Other property income	0.9	2.0	(0.2)	1.8	(0.9)	(50)%	
Management fee income	5.6	3.6	0.5	4.1	1.5	37%	
Interest income	8.3	3.3	—	3.3	5.0	152%	
Other	1.7	—	—	—	1.7	100%	
Total revenues	<u>\$ 95.8</u>	<u>\$ 94.0</u>	<u>\$ (16.5)</u>	<u>\$ 77.5</u>	<u>\$ 18.3</u>	<u>24%</u>	

The increase in minimum rents was attributable to additional rents following our acquisition of Chestnut Hill, Clark Diversey, A&P Shopping Plaza, 2914 Third Avenue and Boonton Shopping Center (60% owned) as well as Fund II acquisitions of Sherman Avenue and 161st Street in New York and a leasehold interest in Chicago ("2005/2006 Acquisitions").

Expense reimbursements for both CAM and real estate taxes increased in 2006. CAM expense reimbursements increased \$0.5 million as a result of higher tenant reimbursements following the 2005/2006 Acquisitions, offset by a decrease in tenant reimbursements as a result of lower snow removal costs in 2006. Real estate tax reimbursements increased \$1.8 million, primarily as a result of the 2005/2006 Acquisitions, as well as general increases in real estate taxes across the portfolio.

The decrease in other property income was the result of receipt of a bankruptcy claim settlement against a former tenant in 2005.

Management fee income increased primarily as a result of fees earned in connection with the acquisition of the Klaff management contract rights in February 2005 and additional management fees earned from our investments in unconsolidated affiliates.

The increase in interest income was attributable to interest income on our advances and notes receivable originated in 2005 and 2006, as well as higher balances in interest earning assets in 2006.

Other income increased as a result of a \$1.1 million reimbursement of the Company's share of certain fees incurred by the institutional investors of Fund I for the Brandywine Portfolio, as well as \$0.5 million related to the termination of an interest rate swap in 2006.

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Operating Expenses

(dollars in millions)	2006	2005 As Reported	Brandywine Portfolio	2005 Adjusted	Change from 2005 Adjusted	
					\$	%
Property operating	\$ 12.8	\$ 13.3	\$ (3.4)	\$ 9.9	\$ 2.9	29%
Real estate taxes	10.1	9.0	(0.8)	8.2	1.9	23%
General and administrative	19.8	16.2	—	16.2	3.6	22%
Depreciation and amortization	25.4	24.7	(2.6)	22.1	3.3	15%
						%
Total operating expenses	\$ 68.1	\$ 63.2	\$ (6.8)	\$ 56.4	\$ 11.7	\$ 21%

The increase in property operating expenses was primarily the result of the recovery of approximately \$0.5 million related to the settlement of our insurance claim in connection with the flood damage incurred at the Mark Plaza in 2005, increased property operating expenses related to the 2005/2006 Acquisitions and higher bad debt expense in 2006. These increases were offset by lower snow removal costs during 2006.

The increase in real estate taxes was due to general increases in real estate taxes experienced across the portfolio, as well as increased real estate tax expense related to the 2005/2006 Acquisitions.

The increase in general and administrative expense was primarily attributable to increased compensation expense of \$2.7 million, including stock-based compensation of \$0.9 million, and \$0.9 million of other overhead expenses following the expansion of our infrastructure related to increased investment in development-intensive projects in Fund assets and asset management services.

Depreciation expense increased \$1.4 million in 2006. This was principally a result of increased depreciation expense related to the 2005/2006 Acquisitions. Amortization expense increased \$1.9 million, which was primarily the combination of an increase in amortization related to the 2005/2006 Acquisitions, specifically, amortization of tenant installation costs of \$1.0 million, amortization of leasehold interest of \$0.5 million and amortization of loan costs of \$0.2 million. In addition, amortization expense increased \$0.2 million related to the write off of certain Klaff management contracts following the disposition of certain related assets in 2006.

Other

(dollars in millions)	2006	2005 As Reported	Brandywine Portfolio	2005 Adjusted	Change from 2005 Adjusted	
					\$	%
Equity in earnings of unconsolidated affiliates	\$ 2.6	\$ 21.3	\$ 0.9	\$ 22.2	\$ (19.6)	(88)%
Interest expense	(20.4)	(16.7)	3.7	(13.0)	(7.4)	(57)%
Minority interest	5.2	(13.9)	5.1	(8.8)	14.0	159%
Income taxes	(0.5)	2.1	—	2.1	2.6	124%
Income from discontinued operations	\$ 23.4	1.3	—	1.3	22.1	1700%

Equity in earnings of unconsolidated affiliates decreased during 2006 primarily as a result of the gains recognized from the sale of Mervyns assets in 2005.

Interest expense increased \$7.4 million as a result of higher average outstanding borrowings in 2006.

Minority interest variance is attributable to the minority partner's share of gains from the sale of Mervyns assets in 2005.

The variance in income tax expense relates to taxes at the taxable REIT subsidiary ("TRS") level on our share of gains from the sale of Mervyns locations during 2005.

Income from discontinued operations represents activity related to properties sold in 2007, 2006 and 2005.

RECONCILIATION OF NET INCOME TO FUNDS FROM OPERATIONS AND ADJUSTED FUNDS FROM OPERATIONS

(dollars in thousands)	For the Years Ended December 31,				
	2007	2006	2005	2004	2003
Net income	\$ 27,270	\$ 39,013	\$ 20,626	\$ 19,585	\$ 7,853
Depreciation of real estate and amortization of leasing costs:					
Consolidated affiliates, net of minority interests' share	19,669	20,206	16,676	16,026	18,421
Unconsolidated affiliates	1,736	1,806	746	714	643
Income attributable to minority interest in operating partnership (1)	614	803	416	375	747
Gain on sale of properties	(5,271)	(21,875)	(2,622)	(6,696)	—
Extraordinary item (net of minority interests' share and income taxes) (3)	(3,677)	—	—	—	—
Funds from operations (2)	40,341	39,953	35,842	30,004	27,664
Add back: Extraordinary item, net (3)	3,677	—	—	—	—
Funds from operations, adjusted for extraordinary item	\$ 44,018	\$ 39,953	\$ 35,842	\$ 30,004	\$ 27,664

Notes:

- Represents income attributable to Common Operating Partnership Units and does not include distributions paid to Series A and B Preferred OP Unitholders.
- The Company considers funds from operations ("FFO") as defined by the National Association of Real Estate Investment Trusts ("NAREIT") to be an appropriate supplemental disclosure of operating performance for an equity REIT due to its widespread acceptance and use within the REIT and analyst communities. FFO is presented to assist investors in analyzing the performance of the Company. It is helpful as it excludes various items included in net income that are not indicative of the operating performance, such as gains (losses) from sales of depreciated property and depreciation and amortization. However, the Company's method of calculating FFO may be different from methods used by other REITs and, accordingly, may not be comparable to such other REIT's. FFO does not represent cash generated from operations as defined by generally accepted accounting principles ("GAAP") and is not indicative of cash available to fund all cash needs, including distributions. It should not be considered as an alternative to net income for the purpose of evaluating the Company's performance or to cash flows as a measure of liquidity. Consistent with the NAREIT definition, the Company defines FFO as net income (computed in accordance with GAAP), excluding gains (losses) from sales of depreciated property, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures.
- The extraordinary item represents the Company's share of estimated extraordinary gain related to its private-equity investment in Albertson's. The Albertson's entity has recorded an extraordinary gain in connection with the allocation of purchase price to assets acquired. The Company considers its private-equity investments to be investments in operating businesses as opposed to real estate. Accordingly, all gains and losses from private-equity investments are included in FFO, which management believes provides a more accurate reflection of the operating performance of the Company.

LIQUIDITY AND CAPITAL RESOURCES**Uses of Liquidity**

Our principal uses of liquidity are expected to be for (i) distributions to our shareholders and OP unit holders, (ii) investments which include the funding of our capital committed to our opportunity funds, property acquisitions and redevelopment/re-tenanting activities within our existing portfolio and (iii) debt service and loan repayments.

Distributions

In order to qualify as a REIT for Federal income tax purposes, we must currently distribute at least 90% of our taxable income to our shareholders. For the first three quarters during 2007, we paid a quarterly dividend of \$0.20 per Common Share and Common OP Unit. In December of 2007, our Board of Trustees approved and declared an 5.0% increase in our quarterly dividend to \$0.21 per Common Share and Common OP Unit for the fourth quarter of 2007, which was paid January 15, 2008. In addition, in December of 2007, our Board of Trustees approved a special dividend of \$0.2225 per Common Share in connection with taxable gains arising from property dispositions that was paid on January 15, 2008 to the shareholders of record as of December 31, 2007.

Fund I and Mervyns I

In September 2001, the Operating Partnership committed \$20.0 million to a newly formed opportunity fund with four of our institutional shareholders, who committed \$70.0 million, for the purpose of acquiring a total of approximately \$300.0 million of community and neighborhood shopping centers on a leveraged basis.

On January 4, 2006, we recapitalized a one million square foot retail portfolio located in Wilmington, Delaware ("Brandywine Portfolio") through a merger of interests with affiliates of GDC Properties ("GDC"). The Brandywine Portfolio was recapitalized through a "cash out" merger of the 77.8% interest, which was previously held by the institutional investors in Fund I (the "Investors") to affiliates of GDC at a valuation of \$164.0 million. The Operating Partnership, through a subsidiary, retained our existing 22.2%

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interest and continues to operate the Brandywine Portfolio and earn fees for such services. At the closing, the Investors, excluding the Operating Partnership, received a return of all their capital invested in Fund I and preferred return, thus triggering the Operating Partnership's Promote distribution in all future Fund I distributions and increasing the Operating Partnership's interest in cash flow and income from 22.2% to 37.8% as a result of the Promote. In June 2006, the Investors received \$36.0 million of additional proceeds from this transaction following the replacement of bridge financing provided by them with permanent mortgage financing.

As of December 31, 2007, Fund I has a total of 29 properties totaling 1.5 million square feet as further discussed in "PROPERTY ACQUISITIONS" in Item 1 of this Form 10-K.

Fund II and Mervyns II

On June 15, 2004, we closed our second opportunity fund, Fund II, and during August 2004, formed Mervyns II with the investors from Fund I as well as two additional institutional investors. With \$300.0 million of committed discretionary capital, Fund II and Mervyns II combined expect to be able to acquire up to \$900.0 million of real estate assets on a leveraged basis. The Operating Partnership is the managing member with a 20% interest in the joint venture. The terms and structure of Fund II are substantially the same as Fund I with the exceptions that the preferred return is 8%. As of December 31, 2007, \$182.0 million had been contributed to Fund II, of which the Operating Partnership's share is \$36.4 million.

Fund II has invested in the RCP Venture and the New York Urban/Infill Redevelopment initiatives and other investments as further discussed in "PROPERTY ACQUISITIONS" in Item 1 of this Form 10-K.

RCP Venture

The following table summarizes the RCP Venture investments from inception through December 31, 2007:

(dollars in millions) Investor	Investment	Year acquired	Invested capital	Distributions	Operating Partnership Share	
					Invested capital	Distributions
Mervyns I and Mervyns II	Mervyns	2004	\$ 26.1	\$ 46.0	\$ 4.9	\$ 11.3
Mervyns I and Mervyns II	Mervyns add-on investments	2005	1.3	1.3	0.3	0.3
Mervyns II	Albertson's	2006	20.7	53.2	4.2	9.8
Mervyns II	Albertson's add-on investments	2006/2007	2.8	0.8	0.4	0.1
Fund II	Shopko	2006	1.1	1.1	0.2	0.2
Fund II	Marsh	2006	0.7	$\frac{3}{4}$	0.1	$\frac{3}{4}$
Mervyns II	Rex	2007	2.7	$\frac{3}{4}$	0.5	$\frac{3}{4}$
Total			<u>\$ 55.4</u>	<u>\$ 102.4</u>	<u>\$ 10.6</u>	<u>\$ 21.7</u>

New York Urban/ Infill Redevelopment Initiative

In September 2004, we, through Fund II, launched our New York Urban Infill Redevelopment initiative. During 2004, Fund II, together with an unaffiliated partner, P/A, formed Acadia P/A ("Acadia P/A") for the purpose of acquiring, constructing, developing, owning, operating, leasing and managing certain retail real estate properties in the New York City metropolitan area. P/A has agreed to invest 10% of required capital up to a maximum of \$2.2 million and Fund II, the managing member, has agreed to invest the balance to acquire assets in which Acadia P/A agrees to invest. Operating cash flow is generally to be distributed pro-rata to Fund II and P/A until each has received a 10% cumulative return and then 60% to Fund II and 40% to P/A. Distributions of net refinancing and net sales proceeds, as defined, follow the distribution of operating cash flow except that unpaid original capital is returned before the 60%/40% split between Fund II and P/A, respectively. Upon the liquidation of the last property investment of Acadia P/A, to the extent that Fund II has not received an 18% internal rate of return ("IRR") on all of its capital contributions, P/A is obligated to return a portion of its previous distributions, as defined, until Fund II has received an 18% IRR. To date, Fund II has invested in nine projects, eight of which are in conjunction with P/A, as follows:

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Property	Location	Year acquired	Purchase price	Redevelopment (dollars in millions)		
				Anticipated additional costs	Estimated completion	Square feet upon completion
Liberty Avenue (1) (2)	Queens	2005	\$ 14.5	\$ —	Completed	125,000
216 th Street(3)	Manhattan	2005	27.5	—	Completed	60,000
Pelham Manor Shopping Center (1)	Westchester	2004	—	45.0	2 nd half 2008	320,000
161 st Street	Bronx	2005	49.0	16.0	1 st half 2009	232,000
400 East Fordham Road	Bronx	2004	30.0	90.0	1 st half 2009	285,000
Canarsie Plaza	Brooklyn	2007	21.0	49.0	1 st half 2009	323,000
4650 Broadway	Manhattan	2005	25.0	30.0	2 nd half 2009	216,000
CityPoint (1)	Brooklyn	2007	29.0	296.0	(4)	600,000
Atlantic Avenue	Brooklyn	2007	5.0	18.0	2 nd half 2009	110,000
Total			<u>\$ 201.0</u>	<u>\$ 544.0</u>		<u>2,271,000</u>

Notes:

- (1) Fund II acquired a ground lease interest at this property.
- (2) Liberty Avenue redevelopment is complete. The purchase price includes redevelopment costs of \$14.5 million.
- (3) 216th Street redevelopment is complete. The purchase price includes redevelopment costs of \$20.5 million.
- (4) To be determined.

Fund III

In May 2007, we closed on our third opportunity fund, Fund III with fourteen institutional investors, including a majority of the investors from Fund I and Fund II. With \$503.0 million of committed discretionary capital, Fund III expects to be able to acquire or develop approximately \$1.5 billion of assets on a leveraged basis. The Operating Partnership's share of the committed capital is \$100.0 million and it is the sole managing member with a 19.9% interest in Fund III. The terms and structure of Fund III are substantially the same as the previous Funds, including the Promote structure, with the exception that the Preferred Return is 6%.

Fund III has invested in the New York Urban/Infill Redevelopment initiatives and another investment as further discussed in "PROPERTY ACQUISITIONS" in Item 1 of this Form 10-K. The projects are as follows:

Property	Location	Year acquired	Purchase price	Redevelopment (dollars in millions)		
				Anticipated additional costs	Estimated completion	Square feet upon completion
Sheepshead Bay	Brooklyn	2007	\$ 20.0	\$ 89.0	(1)	240,000
Main Street	Westport CT	2007	17.0	6.0	(1)	30,000
Total			<u>\$ 37.0</u>	<u>\$ 95.0</u>		<u>270,000</u>

- (1) To be determined.

Other Investments

During 2005, 2006 and 2007, we made the following other core portfolio investments as further discussed in "PROPERTY ACQUISITIONS" in Item 1 of this Form 10-K:

- (i) \$16.8 million in Amboy Road
- (ii) \$9.8 million for Clark/Diversey
- (iii) \$3.2 million for Boonton Shopping Center
- (iv) \$16.0 million for Chestnut Hill and
- (v) \$18.5 million for 2914 Third Avenue
- (vi) \$36.4 million for West 54th Street
- (vii) \$17.0 million for East Service Road

Property Development, Redevelopment and Expansion

Our redevelopment program focuses on selecting well-located neighborhood and community shopping centers and creating significant value through re-tenanting and property redevelopment.

During 2006, we commenced the redevelopment and re-tenanting of the Bloomfield Town Square, located in Bloomfield Hills, Michigan. A former outparcel building, occupied by Chrysler Dodge, was demolished and replaced with a 17,500 square foot building

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occupied by Drexel Heritage and Panera Bread. The new tenants opened and commenced paying rent during the third and fourth quarters of 2006, and are paying base rent at a 127% increase over that of Chrysler Dodge. In addition, we have re-tenanted approximately 26,000 square feet to Circuit City, which commenced paying rent in September of 2007 at a 79% increase over that of the former tenants. Total costs for this project was \$4.6 million.

Additionally, for the year ended December 31, 2007, we currently estimate that capital outlays of approximately \$2.5 million to \$3.5 million will be required for tenant improvements, related renovations and other property improvements.

Share Repurchase

Repurchases of our Common Shares is an additional use of liquidity as discussed in Item 5 of this Form 10-K.

SOURCES OF LIQUIDITY

We intend on using Fund II and Fund III as well as new funds that we may establish in the future, as the primary vehicles for our future acquisitions, including investments in the RCP Venture and New York Urban/Infill Redevelopment initiative. Additional sources of capital for funding property acquisitions, development, redevelopment, expansion, re-tenanting, tenanted, RCP investments and New York Urban/Infill are expected to be obtained primarily from (i) the issuance of public equity or debt instruments, (ii) cash on hand, (iii) additional debt financings, (iv) unrelated member capital contributions and (v) future sales of existing properties. As of December 31, 2007, we had a total of approximately \$202.3 million of additional capacity under existing debt facilities, cash and cash equivalents on hand of \$123.3 million, and ten properties that are unencumbered and available as potential collateral for future borrowings. In addition, during 2007, we, through our RCP Venture, received cash distributions totaling approximately \$53.2 million from our ownership position in Albertsons. The Operating Partnership's share of these distributions amounted to approximately \$10.0 million. We anticipate that cash flow from operating activities will continue to provide adequate capital for all of our debt service payments, recurring capital expenditures and REIT distribution requirements. On January 5, 2006, we made a distribution of \$42.7 million utilizing a \$42.7 million distribution we received from an unconsolidated affiliate on December 29, 2005.

Issuance of Convertible Notes

During December of 2006 and January of 2007, we issued \$115.0 million of 3.75% Convertible Notes. These notes were issued at par and are due in 2026. The \$112.1 million in proceeds, net of related costs, were used to retire variable rate debt, fund capital commitments and general company purposes.

Shelf Registration Statements and Issuance of Equity

During January 2007, we filed a shelf registration on Form S-3 providing offerings for up to a total of \$300.0 million of Common Shares, Preferred Shares and debt securities. To date, we have not issued any securities pursuant to this shelf registration.

In addition, we have \$46.7 million of remaining capacity to issue equity under the shelf registration statement we filed in November 2004.

Financing and Debt

At December 31, 2007, mortgage and convertible notes payable aggregated \$517.0 million, net of unamortized premium of \$0.9 million, and were collateralized by 49 properties and related tenant leases. Interest rates on our outstanding indebtedness ranged from 3.75% to 8.5% with maturities that ranged from March 2008 to November 2032. Taking into consideration \$34.3 million of notional principal under variable to fixed-rate swap agreements currently in effect, as of December 31, 2007 \$401.4 million of the portfolio, or 78%, was fixed at a 5.2% weighted average interest rate and \$115.6 million, or 22% was floating at a 6.0% weighted average interest rate. There is \$92.2 million of debt maturing in 2008 at weighted average interest rates of 5.8%. We intend to refinance the indebtedness or select other alternatives based on market conditions at that time.

Reference is made to Note 7 and Note 8 in the Notes to Consolidated Financial Statements included in this Form 10-K for a summary of the financing and refinancing transactions since December 31, 2006.

Asset Sales

Asset sales are an additional source of liquidity for us. During December of 2007, we sold an apartment complex in Columbia Missouri and during November and December of 2006, we sold the Soundview Marketplace, Bradford Towne Center, Greenridge Plaza, Luzerne Street Shopping Center and Pittston Plaza. During 2005 we sold the Berlin Shopping Center. These sales are discussed in "ASSET SALES AND CAPITAL/ASSET RECYCLING" in Item 1 of this Form 10-K.

CONTRACTUAL OBLIGATIONS AND OTHER COMMITMENTS

At December 31, 2007, maturities on our mortgage notes ranged from March 2008 to November 2032. In addition, we have non-cancelable ground leases at seven of our shopping centers. We lease space for our White Plains corporate office for a term expiring in 2015. The following table summarizes our debt maturities and obligations under non-cancelable operating leases of December 31, 2007:

Contractual obligation: (dollars in millions)	Payments due by period				
	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Future debt maturities	\$ 517.0	\$ 92.2	\$ 64.9	\$ 143.1	\$ 216.8
Interest obligations on debt	146.1	23.7	40.0	31.4	51.0
Operating lease obligations	126.7	3.9	10.2	11.2	101.4
Total	<u>\$ 789.8</u>	<u>\$ 119.8</u>	<u>\$ 115.1</u>	<u>\$ 185.7</u>	<u>\$ 369.2</u>

During May of 2007, we closed on our third opportunity fund, Fund III. The Operating Partnership's share of Fund III's \$503.0 million committed capital is \$100.0 million.

In conjunction with the redevelopment of our core portfolio and opportunity fund properties, we have entered into construction commitments aggregating approximately \$47.8 million with general contractors as of December 31, 2007.

OFF BALANCE SHEET ARRANGEMENTS

We have investments in the following joint ventures for the purpose of investing in operating properties. We account for these investments using the equity method of accounting as we have a non-controlling interest. As such, our financial statements reflect our share of income from but not the assets and liabilities of these joint ventures.

- The Operating Partnership owns a 49% interest in two partnerships which own the Crossroads Shopping Center ("Crossroads"). The Operating Partnership's pro rata share of Crossroads mortgage debt was \$31.4 million as of December 31, 2007. This fixed-rate debt bears interest at 5.4% and matures in December 2014.
- The Operating Partnership owns a 22.2% investment in various entities which own the Brandywine Portfolio. The Operating Partnership's pro-rata share of Brandywine debt was \$36.9 million as of December 31, 2007 with a fixed interest rate of 5.99%. These loans mature on July 1, 2016.
- The Operating Partnership has a 4.9% interest in CityPoint, a Fund II investment, of which the Operating Partnership's pro-rata share of mortgage debt (net of Fund II minority interest share), was \$1.7 million as of December 31, 2007. This loan bears interest at LIBOR plus 120 basis points and matures on June 13, 2008.
- The Operating Partnership has an 18.9% interest in two Fund I investments of which the Operating Partnership's pro-rata share of mortgage debt (net of the Fund I minority interest share), was \$3.2 million as of December 31, 2007. These loans carry a weighted average interest rate of 6.21% and both loans mature during August 2010.

In addition, we have arranged for the provision of five separate letters of credit in connection with certain leases and investments. As of December 31, 2007, there were no outstanding balances under any of the letters of credit. If the letters of credit were fully drawn, the combined maximum amount of exposure would be \$12.2 million.

HISTORICAL CASH FLOW

The following table compares the historical cash flow for the year ended December 31, 2007 ("2007") with the cash flow for the year ended December 31, 2006 ("2006").

(dollars in millions)	Years Ended December 31,		
	2007	2006	Variance
Net cash provided by operating activities	\$ 105.2	\$ 39.6	\$ 64.5
Net cash used in investing activities	(208.9)	(58.9)	(150.0)
Net cash provided by financing activities	87.5	68.4	20.2
Totals	<u>\$ (16.2)</u>	<u>\$ 49.1</u>	<u>\$ (65.3)</u>

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A discussion of the significant changes in cash flow for 2007 versus 2006 is as follows:

The variance in net cash provided by operating activities resulted from an increase of \$23.5 million in operating income before non-cash expenses in 2007, which was primarily due to the increase of \$33.4 million in distributions of operating income from unconsolidated affiliates as a result of the distributions from Albertson's in 2007 as well as those factors discussed in this Item 7. In addition, a net increase in cash of \$42.1 million resulted from changes in operating assets and liabilities, primarily other assets, that was the result of the repayment of notes relating to certain transactions in 2007 as well as an increase in accrued expenses and other liabilities.

The increase in net cash used in investing activities resulted from \$118.0 million of additional expenditures for real estate acquisitions, development and tenant installations in 2007, \$12.1 million of additional investments in unconsolidated affiliates, primarily CityPoint, in 2007, \$9.9 million of additional collections of notes receivable in 2006 as well as an additional \$18.8 million of proceeds from sales in 2006 and the repayment of \$19.0 million of our preferred equity investment in 2006. These net increases were offset by \$29.6 million of additional notes receivable originated in 2006.

The increase in net cash provided by financing activities resulted from an increase of \$65.8 million of contributions from partners and members and minority interests in partially-owned affiliates in 2007, as well as additional cash of \$62.6 million from borrowings in 2007. These increases were offset by an additional \$85.0 million in cash received from the issuance of convertible debt in 2006 and an additional \$27.3 million of distributions to partners and members in 2007

CRITICAL ACCOUNTING POLICIES

Management's discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses. We base our estimates on historical experience and assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe the following critical accounting policies affect the significant judgments and estimates used by us in the preparation of our consolidated financial statements.

Valuation of Property Held for Use and Sale

On a quarterly basis, we review the carrying value of both properties held for use and for sale. We perform the impairment analysis by calculating and reviewing net operating income on a property-by-property basis, we evaluate leasing projections and perform other analyses to conclude whether an asset is impaired. We record impairment losses and reduce the carrying value of properties when indicators of impairment are present and the expected undiscounted cash flows related to those properties are less than their carrying amounts. In cases where we do not expect to recover our carrying costs on properties held for use, we reduce our carrying cost to fair value. For properties held for sale, we reduce our carrying value to the fair value less costs to sell. For the years ended December 31, 2007 and 2006, no impairment losses were recognized. For the year ended December 31, 2005, an impairment loss of \$0.8 million was recognized related to a property that was sold in July of 2005. Management does not believe that the value of any properties in its portfolio was impaired as of December 31, 2007 or 2006.

Bad Debts

We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of tenants to make payments on arrearages in billed rents, as well as the likelihood that tenants will not have the ability to make payment on unbilled rents including estimated expense recoveries and straight-line rent. As of December 31, 2007, we had recorded an allowance for doubtful accounts of \$3.1 million. If the financial condition of our tenants were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances may be required.

Real Estate

Real estate assets are stated at cost less accumulated depreciation. Expenditures for acquisition, development, construction and improvement of properties, as well as significant renovations are capitalized. Interest costs are capitalized until construction is substantially complete. Construction in progress includes costs for significant property expansion and redevelopment. Depreciation is computed on the straight-line basis over estimated useful lives of 30 to 40 years for buildings, the shorter of the useful life or lease term for tenant improvements and five years for furniture, fixtures and equipment. Expenditures for maintenance and repairs are charged to operations as incurred.

Upon acquisitions of real estate, we assess the fair value of acquired assets (including land, buildings and improvements, and identified intangibles such as above and below market leases and acquired in-place leases and customer relationships) and acquired liabilities in accordance with Statement of Financial Accounting Standards ("SFAS") No. 141, "Business Combinations" and SFAS No. 142, "Goodwill and Other Intangible Assets", and allocate purchase price based on these assessments. We assess fair value based on estimated cash flow projections that utilize appropriate discount and capitalization rates and available market information. Estimates of future cash flows are based on a number of factors including the historical operating results, known trends, and

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market/economic conditions that may affect the property.

Revenue Recognition and Accounts and Notes Receivable

Leases with tenants are accounted for as operating leases. Minimum rents are recognized on a straight-line basis over the term of the respective leases, beginning when the tenant takes possession of the space. Certain of these leases also provide for percentage rents based upon the level of sales achieved by the tenant. Percentage rent is recognized in the period when the tenants' sales breakpoint is met. In addition, leases typically provide for the reimbursement to the Company of real estate taxes, insurance and other property operating expenses. These reimbursements are recognized as revenue in the period the expenses are incurred.

The Company makes estimates of the uncollectability of its accounts receivable related to tenant revenues. An allowance for doubtful accounts has been provided against certain tenant accounts receivable that are estimated to be uncollectible. Once the amount is ultimately deemed to be uncollectible, it is written off.

Interest income from notes receivable is recognized on an accrual basis based on the contractual terms of the notes. The Company reviews notes receivable on a quarterly basis to determine collectability.

INFLATION

Our long-term leases contain provisions designed to mitigate the adverse impact of inflation on our net income. Such provisions include clauses enabling us to receive percentage rents based on tenants' gross sales, which generally increase as prices rise, and/or, in certain cases, escalation clauses, which generally increase rental rates during the terms of the leases. Such escalation clauses are often related to increases in the consumer price index or similar inflation indexes. In addition, many of our leases are for terms of less than ten years, which permits us to seek to increase rents upon re-rental at market rates if current rents are below the then existing market rates. Most of our leases require the tenants to pay their share of operating expenses, including common area maintenance, real estate taxes, insurance and utilities, thereby reducing our exposure to increases in costs and operating expenses resulting from inflation.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

Reference is made to the Notes to Consolidated Financial Statements which begins on page F-1 of this Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Our primary market risk exposure is to changes in interest rates related to our mortgage debt. See the consolidated financial statements and notes thereto included in this Annual Report on Form 10-K for certain quantitative details related to our mortgage debt.

Currently, we manage our exposure to fluctuations in interest rates primarily through the use of fixed-rate debt and interest rate swap agreements. As of December 31, 2007, we had total mortgage debt of \$517.0 million of which \$401.4 million, or 78%, was fixed-rate, inclusive of interest rate swaps, and \$115.6 million, or 22%, was variable-rate based upon LIBOR plus certain spreads. As of December 31, 2007, we were a party to four interest rate swap transactions and one interest rate cap transaction to hedge our exposure to changes in interest rates with respect to \$34.3 million and \$30.0 million of LIBOR-based variable-rate debt, respectively.

The following table sets forth information as of December 31, 2007 concerning our long-term debt obligations, including principal cash flows by scheduled maturity and weighted average interest rates of maturing amounts (dollars in millions):

Consolidated mortgage debt:

<u>Year</u>	<u>Scheduled amortization</u>	<u>Maturities</u>	<u>Total</u>	<u>Weighted average interest rate</u>
2008	\$ 6.0	\$ 86.2	\$ 92.2	5.8%
2009	6.1	47.3	53.4	6.3%
2010	1.7	9.8	11.5	6.1%
2011	2.1	129.8	131.9	4.0%
2012	2.2	9.0	11.2	5.9%
Thereafter	16.4	200.4	216.8	5.6%
	<u>\$ 34.5</u>	<u>\$ 482.5</u>	<u>\$ 517.0</u>	

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Mortgage debt in unconsolidated partnerships (at our pro rata share):

<u>Year</u>	<u>Scheduled amortization</u>	<u>Maturities</u>	<u>Total</u>	<u>Weighted average interest rate</u>
2008	\$ 0.4	\$ 1.7	\$ 2.1	5.8%
2009	0.5	—	0.5	5.4%
2010	0.5	3.1	3.6	6.1%
2011	0.5	—	0.5	5.4%
2012	0.5	—	0.5	5.4%
Thereafter	1.6	64.3	65.9	5.7%
	<u>\$ 4.0</u>	<u>\$ 69.1</u>	<u>\$ 73.1</u>	

Of our total consolidated and our pro-rata share of unconsolidated outstanding debt, \$94.3 million and \$53.9 million will become due in 2008 and 2009, respectively. As we intend on refinancing some or all of such debt at the then-existing market interest rates which may be greater than the current interest rate, our interest expense would increase by approximately \$1.4 million annually if the interest rate on the refinanced debt increased by 100 basis points. Interest expense on our variable debt of \$115.6 million as of December 31, 2007 would increase \$1.2 million if LIBOR increased by 100 basis points. We may seek additional variable-rate financing if and when pricing and other commercial and financial terms warrant. As such, we would consider hedging against the interest rate risk related to such additional variable-rate debt through interest rate swaps and protection agreements, or other means.

Based on our outstanding debt balances as of December 31, 2007, the fair value of our total outstanding debt would decrease by approximately \$19.0 million if interest rates increase by 1%. Conversely, if interest rates decrease by 1%, the fair value of our total outstanding debt would increase by approximately \$20.4 million.

As of December 31, 2007 and 2006, we had notes receivable of \$57.7 million and \$36.0 million, respectively. Given the short term nature of the notes and the fact that several of the notes are demand notes, we have determined that the carrying value of the notes receivable approximates fair value.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The financial statements beginning on page F-1 are incorporated herein by reference.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 9A. CONTROLS AND PROCEDURES.

(i) Disclosure Controls and Procedures

We conducted an evaluation, under the supervision and with the participation of management including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2007 to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

(ii) Internal Control Over Financial Reporting

(a) Management's Annual Report on Internal Control Over Financial Reporting

Management of Acadia Realty Trust is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Securities Exchange Act of 1934 Rule 13a-15(f). Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2007 as required by the Securities Exchange Act of 1934 Rule 13a-15(c). In making this assessment, we used the criteria set forth in the framework in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control—Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2007 to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

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BDO Seidman, LLP, an independent registered public accounting firm that audited our Financial Statements included in this Annual Report, has issued an attestation report on our internal control over financial reporting as of December 31, 2007, which appears in paragraph (b) of this Item 9A.

Acadia Realty Trust
White Plains, New York
February 29, 2008

(b) Attestation report of the independent registered public accounting firm

The Shareholders and Trustees of
Acadia Realty Trust

We have audited Acadia Realty Trust and subsidiaries' internal control over financial reporting as of December 31, 2007, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Acadia Realty Trust and subsidiaries' management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control, based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Acadia Realty Trust and subsidiaries maintained in all material respects effective internal control over financial reporting as of December 31, 2007, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Acadia Realty Trust and subsidiaries as of December 31, 2007 and 2006 and the related consolidated statements of income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2007 and our report dated February 29, 2008 expressed an unqualified opinion thereon.

/s/ BDO Seidman, LLP
New York, New York
February 29, 2008

(c) Changes in internal control over financial reporting.

There was no change in our internal control over financial reporting during our fourth fiscal quarter ended December 31, 2007 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION.

None

PART III

In accordance with the rules of the SEC, certain information required by Part III is omitted and is incorporated by reference into this Form 10-K from our definitive proxy statement relating to our 2008 annual meeting of stockholders (our “2008 Proxy Statement”) that we intend to file with the SEC no later than April 29, 2008.

ITEM 10. DIRECTORS; EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

The information under the following headings in the 2008 Proxy Statement is incorporated herein by reference:

- “PROPOSAL 1 — ELECTION OF TRUSTEES”
- “MANAGEMENT”
- “SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE”

ITEM 11. EXECUTIVE COMPENSATION.

The information under the following headings in the 2008 Proxy Statement is incorporated herein by reference:

- “ACADIA REALTY TRUST COMPENSATION COMMITTEE REPORT”
- “COMPENSATION DISCUSSION AND ANALYSIS”
- “EXECUTIVE AND TRUSTEE COMPENSATION”
- “COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION”

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

The information under the heading “SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT” in the 2008 Proxy Statement is incorporated herein by reference.

The information under Item 5 under the heading “(d) Securities authorized for issuance under equity compensation plans” is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

The information under the following headings in the 2008 Proxy Statement is incorporated herein by reference:

- “CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS”
- “PROPOSAL 1 — ELECTION OF TRUSTEES—Trustee Independence”

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES.

The information under the heading “AUDIT COMMITTEE INFORMATION” in the 2008 Proxy Statement is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES.

1. *Financial Statements*: See “Index to Financial Statements” at page F-1 below.
2. *Financial Statement Schedule*: See “Schedule III—Real Estate and Accumulated Depreciation” at page F-38 below.
3. *Exhibits*:

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Exhibit No.	Description
3.1	Declaration of Trust of the Company, as amended (1)
3.2	Fourth Amendment to Declaration of Trust (4)
3.3	Amended and Restated By-Laws of the Company (22)
4.1	Voting Trust Agreement between the Company and Yale University dated February 27, 2002 (14)
10.1	1999 Share Option Plan (8) (21)
10.2	2003 Share Option Plan (16) (21)
10.3	Form of Share Award Agreement (17) (21)
10.4	Form of Registration Rights Agreement and Lock-Up Agreement (18)
10.5	Registration Rights and Lock-Up Agreement (RD Capital Transaction) (11)
10.6	Registration Rights and Lock-Up Agreement (Pacesetter Transaction) (11)
10.7	Contribution and Share Purchase Agreement dated as of April 15, 1998 among Mark Centers Trust, Mark Centers Limited Partnership, the Contributing Owners and Contributing Entities named therein, RD Properties, L.P. VI, RD Properties, L.P. VIA and RD Properties, L.P. VIB (9)
10.8	Agreement of Contribution among Acadia Realty Limited Partnership, Acadia Realty Trust and Klaff Realty, LP and Klaff Realty, Limited (18)
10.9	Employment agreement between the Company and Kenneth F. Bernstein dated October 1998 (6) (21)
10.11	Amendment to employment agreement between the Company and Kenneth F. Bernstein dated January 19, 2007 (26) (21)
10.12	First Amendment to Employment Agreement between the Company and Kenneth Bernstein dated as of January 1, 2001 (12) (21)
10.14	Letter of employment offer between the Company and Michael Nelsen, Sr. Vice President and Chief Financial Officer dated February 19, 2003 (15) (21)
10.15	Severance Agreement between the Company and Joel Braun, Sr. Vice President, dated April 6, 2001 (13) (21)
10.16	Severance Agreement between the Company and Joseph Hogan, Sr. Vice President, dated April 6, 2001 (13) (21)
10.17	Severance Agreement between the Company and Joseph Napolitano, Sr. Vice President dated April 6, 2001 (18) (21)
10.18	Severance Agreement between the Company and Robert Masters, Sr. Vice President and General Counsel dated January 2001 (18) (21)
10.19	Severance Agreement between the Company and Michael Nelsen, Sr. Vice President and Chief Financial Officer dated February 19, 2003 (15) (21)
10.20	Secured Promissory Note between RD Absecon Associates, L.P. and Fleet Bank, N.A. dated February 8, 2000 (7)
10.21	Promissory Note between 239 Greenwich Associates, L.P. and Greenwich Capital Financial Products, Inc. dated May 30, 2003 (18)

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Exhibit No.	Description
10.22	Open-End Mortgage, Assignment of Leases and Rents, and Security Agreement between 239 Greenwich Associates, L.P. and Greenwich Capital Financial Products, Inc. dated May 30, 2003 (18)
10.23	Promissory Note between Merrillville Realty, L.P. and Sun America Life Insurance Company dated July 7, 1999 (7)
10.24	Secured Promissory Note between Acadia Town Line, LLC and Fleet Bank, N.A. dated March 21, 1999 (7)
10.25	Promissory Note between RD Village Associates Limited Partnership and Sun America Life Insurance Company Dated September 21, 1999 (7)
10.26	First Amendment to Severance Agreements between the Company and Joel Braun Executive Vice President and Chief Investment Officer, Michael Nelsen, Senior Vice President and Chief Financial Officer, Robert Masters, Senior Vice President, General Counsel, Chief Compliance Officer and Secretary and Joseph Hogan, Senior Vice President and Director of Construction dated January 19, 2007 (21) (26)
10.33	Term Loan Agreement between Acadia Realty L.P. and The Dime Savings Bank of New York, dated March 30, 2000 (10)
10.34	Mortgage Agreement between Acadia Realty L.P. and The Dime Savings Bank of New York, dated March 30, 2000 (10)
10.44	Prospectus Supplement Regarding Options Issued under the Acadia Realty Trust 1999 Share Incentive Plan and 2003 Share Incentive Plan (19) (21)
10.45	Acadia Realty Trust 1999 Share Incentive Plan and 2003 Share Incentive Plan Deferral and Distribution Election Form (19) (21)
10.46	Amended, Restated And Consolidated Promissory Note between Acadia New Loudon, LLC and Greenwich Capital Financial Products, Inc. dated August 13, 2004 (19)
10.47	Amended, Restated And Consolidated Mortgage, Assignment Of Leases And Rents And Security Agreement between Acadia New Loudon, LLC and Greenwich Capital Financial Products, Inc. dated August 13, 2004 (19)
10.51	Mortgage, Assignment of Leases and Rents and Security Agreement between Acadia Crescent Plaza, LLC and Greenwich Capital Financial Products, Inc. dated August 31, 2005 (22)
10.52	Mortgage, Assignment of Leases and Rents and Security Agreement between Pacesetter/Ramapo Associates and Greenwich Capital Financial Products, Inc. dated October 17, 2005 (22)
10.53	Loan Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (22)
10.54	Mortgage and Security Agreement between RD Elmwood Associates, L.P. and Bear Stearns Commercial Finance Mortgage, Inc. dated December 9, 2005 (22)
10.55	Agreement and Plan Of Merger Dated as of December 22, 2005 by and among Acadia Realty Acquisition I, LLC, Ara Btc LLC, ARA MS LLC, ARA BS LLC, ARA BC LLC and ARA BH LLC, Acadia Investors, Inc., AII BTC LLC, AII MS LLC, AII BS LLC, AII BC LLC And AII BH LLC, Samuel Ginsburg 2000 Trust Agreement #1, Martin Ginsburg 2000 Trust Agreement #1, Martin Ginsburg, Samuel Ginsburg and Adam Ginsburg, and GDC SMG, LLC, GDC Beechwood, LLC, Aspen Cove Apartments, LLC and SMG Celebration, LLC (23)

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Exhibit No.	Description
10.56	Amended and Restated Loan Agreement between Acadia Realty Limited Partnership, as lender, and Levitz SL Woodbridge, L.L.C., Levitz SL St. Paul, L.L.C., Levitz SL La Puente, L.L.C., Levitz SL Oxnard, L.L.C., Levitz SL Willowbrook, L.L.C., Levitz SL Northridge, L.L.C., Levitz SL San Leandro, L.L.C., Levitz SL Sacramento, L.L.C., HL Brea, L.L.C., HL Deptford, L.L.C., HL Hayward, L.L.C., HL San Jose, L.L.C., HL Scottsdale, L.L.C., HL Torrance, L.L.C., HL Irvine 1, L.L.C., HL West Covina, L.L.C., HL Glendale, L.L.C. and HL Northridge, L.L.C., each a Delaware limited liability company, Levitz SL Langhorne, L.P. and HL Fairless Hills, L.P., each a Delaware limited partnership (each, together with its permitted successors and assigns, a “ <i>Borrower</i> ”, and collectively, together with their respective permitted successors and assigns, “ <i>Borrowers</i> ”), dated June 1, 2006 (24)
10.57	Consent and Assumption Agreement between Thor Chestnut Hill, LP, Thor Chestnut Hill II, LP, Acadia Chestnut, LLC, Acadia Realty Limited Partnership and Wells Fargo Bank, N.A. dated June 9, 2006, original Mortgage and Security Agreement between Thor Chestnut Hill, LP and Thor Chestnut Hill II, LP and Column Financial, Inc. dated June 5, 2003 and original Assignment of Leases and Rents from Thor Chestnut Hill, LP and Thor Chestnut Hill II, LP to Column Financial, Inc. dated June 2003. (24)
10.58	Loan Agreement and Promissory Note between RD Woonsocket Associates, L.P. and Merrill Lynch Mortgage Lending, Inc. dated September 8, 2006 (25)
10.59	Amended and Restated Revolving Loan Agreement dated as of December 19, 2006 by and among RD Abington Associates LP, Acadia Town Line, LLC, RD Methuen Associates LP, RD Absecon Associates, LP, RD Bloomfield Associates, LP, RD Hobson Associates, LP, and RD Village Associates LP, and Bank of America, N.A. and the First Amendment to Amended and Restated Revolving Loan Agreement dated February, 2007. (26)
10.60	Loan Agreement between Bank of America, N.A. and RD Branch Associates, LP dated December 19, 2006. (26)
10.61	Loan Agreement between 239 Greenwich Associates Limited Partnership and Wachovia Bank, National Association dated January 25, 2007. (28)
10.62	Revolving Credit Agreement between Acadia Realty Limited Partnership and Washington Mutual Bank dated March 29, 2007. (28)
10.63	Loan Agreement between Acadia Merrillville Realty, L.P. and Bear Stearns Commercial Mortgage, Inc dated July 2, 2007. (29)
10.64	Promissory Note between Acadia Merrillville Realty, L.P. and Bear Stearns Commercial Mortgage, Inc dated July 2, 2007. (29)
10.65	Loan Agreement Note between APA 216 th Street and Bank of America, N.A. dated September 11, 2007. (29)
10.66	Promissory Note between APA 216 th Street and Bank of America, N.A. dated September 11, 2007. (29)
10.67	Acquisition and Project Loan agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007 (30)
10.68	Building Loan Agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007 (30)
10.69	Revolving credit agreement between Acadia Strategic Opportunity Fund III, LLC. and Bank of America, N.A. dated October 10, 2007 (30)
10.70	Mortgage Consolidation and Modification Agreement between Acadia Tarrytown LLC and Anglo Irish Bank Corporation, PLC dated October 30, 2007 (30)
10.71	Project Loan Agreement between P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (30)

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Exhibit No.	Description
10.72	Building Loan Agreement P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (30)
10.73	Project Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (30)
10.74	Building Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (30)
10.75	Certain information regarding the compensation arrangements with certain officers of registrant (Incorporated by reference to Item 5.02 of the registrant’s Form 8-K filed with the SEC on February 4, 2008)
21	List of Subsidiaries of Acadia Realty Trust (30)
23.1	Consent of Registered Public Accounting Firm to incorporation by reference its reports into Forms S-3 and Forms S-8 (30)
31.1	Certification of Chief Executive Officer pursuant to rule 13a–14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (26)
31.2	Certification of Chief Financial Officer pursuant to rule 13a–14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (26)
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (26)
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (26)
99.1	Amended and Restated Agreement of Limited Partnership of the Operating Partnership (11)
99.2	First and Second Amendments to the Amended and Restated Agreement of Limited Partnership of the Operating Partnership (11)
99.3	Third Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (18)
99.4	Fourth Amendment to Amended and Restated Agreement of Limited Partnership of the Operating Partnership (18)
99.5	Certificate of Designation of Series A Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (2)
99.6	Certificate of Designation of Series B Preferred Operating Partnership Units of Limited Partnership Interest of Acadia Realty Limited Partnership (18)

Notes:

- (1) Incorporated by reference to the copy thereof filed as an Exhibit to the Company’s Annual Report on Form 10-K filed for the fiscal Year ended December 31, 1994
- (2) Incorporated by reference to the copy thereof filed as an Exhibit to Company’s Quarterly Report on Form 10-Q filed for the quarter ended June 30, 1997
- (3) Incorporated by reference to the copy thereof filed as an Exhibit to Company’s Quarterly Report on Form 10-Q filed for the quarter ended September 30, 1998
- (4) Incorporated by reference to the copy thereof filed as an Exhibit to Company’s Quarterly Report on Form 10-Q filed for the quarter ended September 30, 1998

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Notes, continued

- (5) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-11 (File No.33-60008)
- (6) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 1998
- (7) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 1999
- (8) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-8 filed September 28, 1999
- (9) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Form 8-K filed on April 20, 1998
- (10) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Form 10-K filed for the fiscal year ended December 31, 2000
- (11) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Registration Statement on Form S-3 filed on March 3, 2000
- (12) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2001
- (13) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2001
- (14) Incorporated by reference to the copy thereof filed as an Exhibit to Yale University's Schedule 13D filed on September 25, 2002
- (15) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2002
- (16) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Definitive Proxy Statement on Schedule 14A filed April 29, 2003.
- (17) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Current Report on Form 8-K filed on July 2, 2003
- (18) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2003
- (19) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2004.
- (20) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2004.
- (21) Management contract or compensatory plan or arrangement.
- (22) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2005.
- (23) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Current Report on Form 8-K filed on January 4, 2006
- (24) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended June 30, 2006
- (25) Incorporated by reference to the copy thereof filed as an Exhibit to Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2006
- (26) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Current Report on Form 8-K filed on January 19, 2007
- (27) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Annual Report on Form 10-K filed for the fiscal year ended December 31, 2006.
- (28) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended March 31, 2007.
- (29) Incorporated by reference to the copy thereof filed as an Exhibit to the Company's Quarterly Report on Form 10-Q filed for the quarter ended September 30, 2007.
- (30) Filed herewith.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized.

**ACADIA REALTY TRUST
(Registrant)**

By: /s/ Kenneth F. Bernstein
Kenneth F. Bernstein
Chief Executive Officer,
President and Trustee

By: /s/ Michael Nelsen
Michael Nelsen
Senior Vice President and
Chief Financial Officer

By: /s/ Jonathan W. Grisham
Jonathan W. Grisham
Senior Vice President and
Chief Accounting Officer

Dated: February 29, 2008

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ Kenneth F. Bernstein (Kenneth F. Bernstein)	Chief Executive Officer, President and Trustee (Principal Executive Officer)	February 29, 2008
/s/ Michael Nelsen (Michael Nelsen)	Senior Vice President and Chief Financial Officer (Principal Financial Officer)	February 29, 2008
/s/ Jonathan W. Grisham (Jonathan W. Grisham)	Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)	February 29, 2008
/s/ Douglas Crocker II (Douglas Crocker II)	Trustee	February 29, 2008
/s/ Alan S. Forman (Alan S. Forman)	Trustee	February 29, 2008
/s/ Suzanne Hopgood (Suzanne Hopgood)	Trustee	February 29, 2008
/s/ Lorrence T. Kellar (Lorrence T. Kellar)	Trustee	February 29, 2008
/s/ Wendy Luscombe (Wendy Luscombe)	Trustee	February 29, 2008
/s/ William T. Spitz (William T. Spitz)	Trustee	February 29, 2008
/s/ Lee S. Wielansky (Lee S. Wielansky)	Trustee	February 29, 2008

EXHIBIT INDEX

The following is an index to all exhibits filed with the Annual Report on Form 10-K other than those incorporated by reference herein:

<u>Exhibit No.</u>	<u>Description</u>
10.67	Acquisition and Project Loan agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007
10.68	Building Loan Agreement between Acadia – PA East Fordham Acquisitions, LLC and Eurohypo AG, New York Branch dated October 5, 2007
10.69	Revolving credit agreement between Acadia Strategic Opportunity Fund III, LLC. and Bank of America, N.A. dated October 10, 2007
10.70	Mortgage Consolidation and Modification Agreement between Acadia Tarrytown LLC and Anglo Irish Bank Corporation, PLC dated October 30, 2007
10.71	Project Loan Agreement between P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007
10.72	Building Loan Agreement P/A – Acadia Pelham Manor, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 10, 2007 (30)
10.73	Project Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007 (30)
10.74	Building Loan Agreement between Acadia Atlantic Avenue, LLC and Bear Stearns Commercial Mortgage, Inc. dated December 26, 2007
21	List of Subsidiaries of Acadia Realty Trust
23.1	Consent of Registered Public Accounting Firm to incorporation by reference its reports into Forms S-3 and Forms S-8
31.1	Certification of Chief Executive Officer pursuant to rule 13a – 14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to rule 13a – 14(a)/15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

ACADIA REALTY TRUST AND SUBSIDIARIES

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Consolidated Statements of Income for the years ended December 31, 2007, 2006 and 2005	F-4
Consolidated Statements of Shareholders' Equity for the years ended December 31, 2007, 2006 and 2005	F-5
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Report of Independent Registered Public Accounting Firm

The Shareholders and Trustees of
Acadia Realty Trust

We have audited the accompanying consolidated balance sheets of Acadia Realty Trust and subsidiaries (the “Company”) as of December 31, 2007 and 2006 and the related consolidated statements of income, stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2007. In connection with our audits of the financial statements we have also audited the accompanying financial statement schedule listed on page F-1. These financial statements and schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements and schedules. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Acadia Realty Trust and subsidiaries at December 31, 2007, and 2006 and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2007, in conformity with generally accepted accounting principles in the United States of America.

Also, in our opinion, the financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Acadia Realty Trust and subsidiaries’ internal control over financial reporting as of December 31, 2007, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated February 29, 2008 expressed an unqualified opinion thereon.

As explained in Note 1 to the financial statements, effective January 1, 2006, Acadia Realty Trust and subsidiaries adopted the provisions of Staff Accounting Bulletin 108, Considering the Effects of Prior Year Misstatements when Qualifying Misstatements in Current Year Financial Statements.

/s/ BDO Seidman, LLP

New York, New York
February 29, 2008

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	December 31,	
	2007	2006
	(dollars in thousands)	
ASSETS		
Real estate:		
Land	\$ 235,550	\$ 145,916
Buildings and improvements	540,760	465,050
Construction in progress	77,764	39,085
	<u>854,074</u>	<u>650,051</u>
Less: accumulated depreciation	155,480	135,085
Net real estate	698,594	514,966
Cash and cash equivalents	123,343	139,571
Cash in escrow	6,637	5,321
Investments in and advances to unconsolidated affiliates	44,654	33,333
Rents receivable, net	13,449	11,869
Notes receivable	57,662	36,038
Deferred charges, net	21,825	20,749
Acquired lease intangibles	16,103	11,653
Prepaid expenses and other assets, net	16,745	41,959
Assets of discontinued operations	—	36,233
	<u>\$ 999,012</u>	<u>\$ 851,692</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Mortgage notes payable	\$ 402,903	\$ 319,507
Convertible notes payable	115,000	100,000
Acquired lease intangibles	5,651	4,919
Accounts payable and accrued expenses	15,289	9,882
Dividends and distributions payable	14,420	6,661
Share of distributions in excess of share of income and investment in unconsolidated affiliates	20,007	21,728
Other liabilities	13,895	5,379
Liabilities of discontinued operations	—	28,760
Total liabilities	<u>587,165</u>	<u>496,836</u>
Minority interest in operating partnership	4,595	8,673
Minority interests in partially-owned affiliates	166,516	105,064
Total minority interests	<u>171,111</u>	<u>113,737</u>
Shareholders' equity:		
Common shares, \$.001 par value, authorized 100,000,000 shares, issued and outstanding 32,184,462 and 31,772,952 shares, respectively	32	31
Additional paid-in capital	227,890	227,555
Accumulated other comprehensive loss	(953)	(234)
Retained earnings	13,767	13,767
Total shareholders' equity	<u>240,736</u>	<u>241,119</u>
	<u>\$ 999,012</u>	<u>\$ 851,692</u>

The accompanying notes are an integral part of these consolidated financial statements

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME

	<u>2007</u>	<u>Years ended December 31,</u> <u>2006</u>	<u>2005</u>
	(dollars in thousands except per share amounts)		
Revenues			
Minimum rents	\$ 72,051	\$ 63,629	\$ 69,401
Percentage rents	625	1,192	1,272
Expense reimbursements	13,318	14,538	14,440
Other property income	1,031	857	1,972
Management fee income from related parties, net	4,064	5,625	3,564
Interest income	10,315	8,311	3,316
Other income	165	1,648	—
Total revenues	<u>101,569</u>	<u>95,800</u>	<u>93,965</u>
Operating Expenses			
Property operating	15,881	12,857	13,348
Real estate taxes	9,678	10,095	8,952
General and administrative	23,058	19,782	16,153
Depreciation and amortization	27,506	25,361	24,697
Total operating expenses	<u>76,123</u>	<u>68,095</u>	<u>63,150</u>
Operating income			
	<u>25,446</u>	<u>27,705</u>	<u>30,815</u>
Equity in earnings of unconsolidated affiliates	6,619	2,559	21,280
Interest expense	(22,775)	(20,377)	(16,689)
Minority interest	9,063	5,227	(13,946)
Income from continuing operations before income taxes	18,353	15,114	21,460
Income tax provision (benefit)	297	(508)	2,140
Income from continuing operations	<u>18,056</u>	<u>15,622</u>	<u>19,320</u>
Discontinued operations			
Operating income from discontinued operations	377	2,879	2,152
Impairment of real estate	—	—	(770)
Gain (loss) on sale of properties, net	5,271	20,974	(50)
Minority interest	(111)	(462)	(26)
Income from discontinued operations	<u>5,537</u>	<u>23,391</u>	<u>1,306</u>
Extraordinary item			
Share of extraordinary gain from investment in unconsolidated affiliate	30,200	—	—
Minority Interest	(24,167)	—	—
Income tax provision	(2,356)	—	—
Income from extraordinary item	<u>3,677</u>	<u>—</u>	<u>—</u>
Net income	<u>\$ 27,270</u>	<u>\$ 39,013</u>	<u>\$ 20,626</u>
Basic earnings per share			
Income from continuing operations	\$ 0.55	\$ 0.48	\$ 0.61
Income from discontinued operations	0.17	0.72	0.04
Income from extraordinary item	0.11	—	—
Basic earnings per share	<u>\$ 0.83</u>	<u>\$ 1.20</u>	<u>\$ 0.65</u>
Diluted earnings per share			
Income from continuing operations	\$ 0.54	\$ 0.48	\$ 0.60
Income from discontinued operations	0.17	0.70	0.04
Income from extraordinary item	0.11	—	—
Diluted earnings per share	<u>\$ 0.82</u>	<u>\$ 1.18</u>	<u>\$ 0.64</u>

The accompanying notes are an integral part of these consolidated financial statements

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY

	Common Shares Shares	Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total Shareholders' Equity
	(dollars in thousands, except per share amounts)					
Balance at December 31, 2004	31,341	\$ 31	\$ 222,715	\$ (3,180)	\$ (2,642)	\$ 216,924
Conversion of 796 Series A Preferred OP Units to Common Shares by limited partners of the Operating Partnership	92	—	696	—	—	696
Employee Restricted Share awards	52	—	1,030	—	—	1,030
Dividends declared (\$0.7025 per Common Share)	—	—	(1,691)	—	(20,626)	(22,317)
Employee and trustee exercise of 51,200 options	51	—	345	—	—	345
Common Shares issued under Employee Share Purchase Plan	7	—	104	—	—	104
Unrealized gain on valuation of swap agreements	—	—	—	2,708	—	2,708
Amortization of derivative instrument	—	—	—	460	—	460
Net income	—	—	—	—	20,626	20,626
Total comprehensive income	—	—	—	—	—	23,794
Balance at December 31, 2005	31,543	31	223,199	(12)	(2,642)	220,576
Cumulative effect of straight-line rent Adjustment	—	—	—	—	1,796	1,796
Conversion of 696 Series A Preferred OP Units to Common Shares by limited partners of the Operating Partnership	93	—	696	—	—	696
Employee Restricted Share awards	122	—	3,530	—	—	3,530
Dividends declared (\$0.755 per Common Share)	—	—	—	—	(24,400)	(24,400)
Employee exercise of 7,500 options to purchase Common Shares	8	—	43	—	—	43
Common Shares issued under Employee Share Purchase Plan	4	—	112	—	—	112
Redemption of 11,105 restricted Common OP Units	—	—	(101)	—	—	(101)
Issuance of Common Shares to Trustees	3	—	76	—	—	76
Unrealized loss on valuation of swap agreements	—	—	—	(662)	—	(662)
Amortization of derivative instrument	—	—	—	440	—	440
Net income	—	—	—	—	39,013	39,013
Total comprehensive income	—	—	—	—	—	38,791
Balance at December 31, 2006	31,773	31	227,555	(234)	13,767	241,119
Conversion of 4,000 Series B Preferred OP Units to Common Shares by limited partners of the Operating Partnership	312	—	4,000	—	—	4,000
Employee Restricted Share awards	103	1	3,151	—	—	3,152
Dividends declared (\$1.0325 per Common Share)	—	—	(6,425)	—	(27,270)	(33,695)
Employee exercise of 17,474 options to purchase Common Shares	17	—	174	—	—	174
Common Shares issued under Employee Share Purchase Plan	7	—	183	—	—	183
Issuance of Common Shares to Trustees	13	—	346	—	—	346
Employee Restricted Shares cancelled	(41)	—	(1,094)	—	—	(1,094)
Unrealized loss on valuation of swap agreements	—	—	—	(921)	—	(921)
Amortization of derivative instrument	—	—	—	202	—	202
Net income	—	—	—	—	27,270	27,270
Total comprehensive income	—	—	—	—	—	26,551
Balance at December 31, 2007	<u>32,184</u>	<u>\$ 32</u>	<u>\$ 227,890</u>	<u>\$ (953)</u>	<u>\$ 13,767</u>	<u>\$ 240,736</u>

The accompanying notes are an integral part of these consolidated financial statements.



ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	<u>2007</u>	Years ended December 31, <u>2006</u> (dollars in thousands)	<u>2005</u>
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 27,270	\$ 39,013	\$ 20,626
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	28,428	27,178	27,747
(Gain) loss on sale of property	(5,271)	(20,974)	50
Impairment of real estate	—	—	770
Minority interests	15,215	(4,765)	13,972
Amortization of lease intangibles	722	1,080	980
Amortization of mortgage note premium	(111)	(144)	(530)
Share compensation expense	3,285	3,531	1,029
Equity in earnings of unconsolidated affiliates	(36,819)	(2,559)	(21,280)
Distributions of operating income from unconsolidated affiliates	36,666	3,277	21,498
Amortization of derivative settlement included in interest expense	202	440	460
Changes in assets and liabilities:			
Funding of escrows, net	667	(1,389)	(1,827)
Rents receivable	(1,180)	260	(3,004)
Prepaid expenses and other assets, net	23,926	967	(8,867)
Accounts payable and accrued expenses	4,962	(5,200)	(3,855)
Other liabilities	7,203	(1,088)	2,470
Net cash provided by operating activities	<u>105,165</u>	<u>39,627</u>	<u>50,239</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Investment in real estate and improvements	(210,227)	(87,009)	(131,077)
Deferred acquisition and leasing costs	(1,746)	(6,941)	(5,670)
Investments in and advances to unconsolidated affiliates	(39,712)	(27,626)	(455)
Return of capital from unconsolidated affiliates	26,625	28,423	22,847
Collections of notes receivable	11,071	20,948	1,868
Advances of notes receivable	(14,548)	(44,162)	(7,914)
Preferred equity investment	—	19,000	(19,000)
Proceeds from sale of property	19,668	38,477	3,931
Net cash used in investing activities	<u>(208,869)</u>	<u>(58,890)</u>	<u>(135,470)</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	<u>2007</u>	Years ended December 31, <u>2006</u> (dollars in thousands)	<u>2005</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Principal payments on mortgage notes	\$ (165,451)	\$ (168,082)	\$ (44,784)
Proceeds received on mortgage notes	222,218	159,617	184,466
Proceeds received on convertible notes	15,000	100,000	—
Payment of deferred financing and other costs	(4,128)	(7,026)	(2,801)
Capital contributions from partners and members	105,520	44,481	44,122
Distributions to partners and members	(61,050)	(36,120)	—
Dividends paid to Common Shareholders	(26,039)	(23,823)	(21,869)
Distributions to minority interests in Operating Partnership	(527)	(487)	(380)
Distributions on preferred Operating Partnership Units to minority interests	(86)	(254)	(342)
Distributions to minority interests in partially-owned affiliates	(2,612)	(232)	(436)
Repurchase and cancellation of shares	(1,094)	—	—
Contributions from minority interests in partially -owned affiliates	5,022	300	1,000
Redemption of Operating Partnership Units	—	(246)	—
Common Shares issued under Employee Stock Purchase Plan	529	188	104
Exercise of options to purchase Common Shares	174	43	345
	<u>87,476</u>	<u>68,359</u>	<u>159,425</u>
Net cash provided by financing activities	<u>87,476</u>	<u>68,359</u>	<u>159,425</u>
(Decrease) increase in cash and cash equivalents	(16,228)	49,096	74,194
Cash and cash equivalents, beginning of period	139,571	90,475	16,281
Cash and cash equivalents, end of period	<u>\$ 123,343</u>	<u>\$ 139,571</u>	<u>\$ 90,475</u>
Supplemental disclosure of cash flow information:			
Cash paid during the period for interest, including capitalized interest of \$34, \$79, and \$260, respectively	<u>\$ 23,709</u>	<u>\$ 22,843</u>	<u>\$ 18,799</u>
Cash paid for income taxes	<u>\$ 348</u>	<u>\$ 1,039</u>	<u>\$ 1,512</u>
Supplemental disclosure of non-cash investing and financing activities:			
Acquisition of management contract rights through issuance of Common and Preferred Operating Partnership Units	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 4,000</u>
Acquisition of real estate through assumption of debt	<u>\$ —</u>	<u>\$ 22,583</u>	<u>\$ —</u>
Issuance of notes receivable in connection with sale of real estate	<u>\$ (18,000)</u>	<u>\$ —</u>	<u>\$ —</u>
Acquisition of property through issuance of Preferred Operating Partnership Units	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 200</u>
Conversion of common equity interest into preferred equity interest in investments	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 3,255</u>
Recapitalization and deconsolidation of investment:			
Real estate, net	\$ —	\$ 124,962	\$ —
Other assets and liabilities	—	(11,413)	—
Mortgage debt	—	(66,984)	—
Minority interests	—	(36,504)	—
Investment in unconsolidated affiliates	—	(10,428)	—
Cash included in investments and advances to unconsolidated affiliates	<u>\$ —</u>	<u>\$ (367)</u>	<u>—</u>
Acquisition of interest in investment from unaffiliated investor:			
Real estate, net	\$ —	\$ (9,260)	\$ —
Other assets and liabilities	—	5,901	—
Investment in unconsolidated affiliates	—	3,469	—
Cash included in expenditures for real estate and improvements	<u>\$ —</u>	<u>\$ 110</u>	<u>\$ —</u>

The accompanying notes are an integral part of these consolidated financial statements.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies

Acadia Realty Trust (the “Trust”) and subsidiaries (collectively, the “Company”) is a fully integrated, self-managed and self-administered equity real estate investment trust (“REIT”) focused primarily on the ownership, acquisition, redevelopment and management of retail properties, including neighborhood and community shopping centers and mixed-use properties with retail components.

As of December 31, 2007, the Company operated 76 properties, which it owns or has an ownership interest in, principally located in the Northeast, Mid-Atlantic and Midwest regions of the United States.

All of the Company’s assets are held by, and all of its operations are conducted through, Acadia Realty Limited Partnership (the “Operating Partnership”) and entities in which the Operating Partnership owns a controlling interest. As of December 31, 2007, the Trust controlled 98% of the Operating Partnership as the sole general partner. As the general partner, the Trust is entitled to share, in proportion to its percentage interest, in the cash distributions and profits and losses of the Operating Partnership. The limited partners represent entities or individuals who contributed their interests in certain properties or entities to the Operating Partnership in exchange for common or preferred units of limited partnership interest (“Common or Preferred OP Units”). Limited partners holding Common OP Units are generally entitled to exchange their units on a one-for-one basis for common shares of beneficial interest of the Trust (“Common Shares”). This structure is referred to as an umbrella partnership REIT or “UPREIT”.

During September of 2001, the Company formed a partnership, Acadia Strategic Opportunity Fund I, LP (“Fund I”), and during August of 2004 formed a limited liability company, Acadia Mervyn Investors I, LLC (“Mervyns I”), with four institutional investors. The Operating Partnership committed a total of \$20.0 million to Fund I and Mervyns I, and the four institutional shareholders committed a total of \$70.0 million, for the purpose of acquiring approximately \$300.0 million in investments. As of December 31, 2007, the Operating Partnership had contributed \$16.5 million to Fund I and \$2.7 million to Mervyns I.

The Operating Partnership is the general partner of Fund I and sole managing member of Mervyns I, with a 22.2% interest in both Fund I and Mervyns I and is also entitled to a profit participation in excess of its invested capital based on certain investment return thresholds (“Promote”). Cash flow is distributed pro-rata to the partners and members (including the Operating Partnership) until they receive a 9% cumulative return (“Preferred Return”), and the return of all capital contributions. Thereafter, remaining cash flow (which is net of distributions and fees to the Operating Partnership for management, asset management, leasing, construction and legal services) is distributed 80% to the partners (including the Operating Partnership) and 20% to the Operating Partnership as a Promote. As all contributed capital and accumulated preferred return has been distributed to investors, the Operating Partnership is currently entitled to a Promote on all earnings and distributions.

During June of 2004, the Company formed Acadia Strategic Opportunity Fund II, LLC (“Fund II”), and during August 2004 formed Acadia Mervyn Investors II, LLC (“Mervyns II”), with the investors from Fund I as well as two additional institutional investors. With \$300.0 million of committed discretionary capital, Fund II and Mervyns II combined expect to be able to acquire or develop up to \$900.0 million of investments on a leveraged basis. The Operating Partnership’s share of committed capital is \$60.0 million. The Operating Partnership is the managing member with a 20% interest in both Fund II and Mervyns II. The terms and structure of Fund II and Mervyns II are substantially the same as Fund I and Mervyns I, including the Promote structure, with the exception that the Preferred Return is 8%. As of December 31, 2007, the Operating Partnership had contributed \$28.8 million to Fund II and \$7.6 million to Mervyns II.

During May of 2007, the Company formed Acadia Strategic Opportunity Fund III LLC (“Fund III”) with fourteen institutional investors, including a majority of the investors from Fund I and Fund II. With \$503.0 million of committed discretionary capital, Fund III expects to be able to acquire or develop approximately \$1.5 billion of assets on a leveraged basis. The Operating Partnership’s share of the invested capital is \$100.0 million and it is the managing member with a 19.9% interest in Fund III. The terms and structure of Fund III is substantially the same as the previous Funds I and II, including the Promote structure, with the exception that the Preferred Return is 6%. As of December 31, 2007, the Operating Partnership had contributed \$10.5 million to Fund III.

Principles of Consolidation

The consolidated financial statements include the consolidated accounts of the Company and its controlling investments in partnerships and limited liability companies in which the Company is presumed to have control in accordance with Emerging Issues Task Force (“EITF”) Issue No. 04-5. The ownership interests of other investors in these entities are recorded as minority interests. All significant intercompany balances and transactions have been eliminated in consolidation. Investments in entities for which the Company has the ability to exercise significant influence over, but does not have financial or operating control, are accounted for using the equity method of accounting. Accordingly, the Company’s share of the earnings (or loss) of these entities are included in consolidated net income.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued

Principles of Consolidation, continued

Variable interest entities within the scope of Financial Accounting Standards Board (“FASB”) Interpretation No. 46, “Consolidation of Variable Interest Entities” (“FIN 46-R”) are required to be consolidated by their primary beneficiary. The primary beneficiary of a variable interest entity is determined to be the party that bears a majority of the entity’s expected losses, receives a majority of its expected returns, or both. Management has evaluated the applicability of FIN 46-R to its investments in certain joint ventures and determined that these joint ventures do not meet the requirements of a variable interest entity or the Company is not the primary beneficiary and, therefore, consolidation of these ventures is not required. Accordingly, these investments are accounted for using the equity method.

On January 4, 2006, Fund I recapitalized its investment in a one million square foot shopping center portfolio located in Wilmington, Delaware (“Brandywine Portfolio”). The recapitalization was effected through the conversion of the 77.8% interest which was previously held by the institutional investors in Fund I to affiliates of GDC Properties (“GDC”) through a merger of interests in exchange for cash. The Operating Partnership has retained its existing 22.2% interest in the Brandywine Portfolio in partnership with GDC and continues to operate the portfolio and earn fees for such services. Following the January 2006 recapitalization of the Brandywine Portfolio, the Company no longer has a controlling interest in this investment and, accordingly, accounts for this investment under the equity method of accounting.

Investments in and Advances to Unconsolidated Joint Ventures

The Company accounts for its investments in unconsolidated joint ventures using the equity method as it does not exercise control over significant asset decisions such as buying, selling or financing nor is it the primary beneficiary under FIN 46R, as discussed above. Under the equity method, the Company increases its investment for its proportionate share of net income and contributions to the joint venture and decreases its investment balance by recording its proportionate share of net loss and distributions. The Company recognizes income for distributions in excess of its investment where there is no recourse to the Company. For investments in which there is recourse to the Company, distributions in excess of the investment are recorded as a liability. Although the Company accounts for its investment in Albertson’s (Note 4), using the equity method of accounting, the Company adopted the policy of not recording its equity in earnings or losses of this unconsolidated affiliate until the Company receives the audited financial statements of Albertson’s to support the equity earnings or losses in accordance with paragraph 19 of Accounting Principles Board (“APB”) 18 “Equity Method of Accounting for Investments in Common Stock.”

The Company periodically reviews its investment in unconsolidated joint ventures for other than temporary declines in market value. Any decline that is not expected to be recovered in the next twelve months is considered other than temporary and an impairment charge is recorded as a reduction in the carrying value of the investment. No impairment charges were recognized for the years ended December 31, 2007, 2006 and 2005.

Use of Estimates

Accounting principles generally accepted in the United States of America (“GAAP”) require the Company’s management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. The most significant assumptions and estimates relate to the valuation of real estate, depreciable lives, revenue recognition and the collectability of trade accounts receivable. Application of these assumptions requires the exercise of judgment as to future uncertainties and, as a result, actual results could differ from these estimates.

Real Estate

Real estate assets are stated at cost less accumulated depreciation. Expenditures for acquisition, development, construction and improvement of properties, as well as significant renovations are capitalized. Interest costs are capitalized until construction is substantially complete. Construction in progress includes costs for significant property expansion and redevelopment. Depreciation is computed on the straight-line basis over estimated useful lives of 30 to 40 years for buildings, the shorter of the useful life or lease term for tenant improvements and five years for furniture, fixtures and equipment. Expenditures for maintenance and repairs are charged to operations as incurred.

Upon acquisitions of real estate, the Company assesses the fair value of acquired assets (including land, buildings and improvements, and identified intangibles such as above and below market leases and acquired in-place leases and customer relationships) and acquired liabilities in accordance with Statement of Financial Accounting Standards (“SFAS”) No. 141, “Business Combinations” and

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued

Real Estate, continued

SFAS No. 142, "Goodwill and Other Intangible Assets", and allocates purchase price based on these assessments. The Company assesses fair value based on estimated cash flow projections that utilize appropriate discount and capitalization rates and available market information. Estimates of future cash flows are based on a number of factors including the historical operating results, known trends, and market/economic conditions that may affect the property.

The Company reviews its long-lived assets used in operations for impairment when there is an event, or change in circumstances that indicates impairment in value. The Company records impairment losses and reduces the carrying value of properties when indicators of impairment are present and the expected undiscounted cash flows related to those properties are less than their carrying amounts. In cases where the Company does not expect to recover its carrying costs on properties held for use, the Company reduces its carrying cost to fair value, and for properties held for sale, the Company reduces its carrying value to the fair value less costs to sell. During the years ended December 31, 2007 and 2006, no impairment losses were recognized. During the year ended December 31, 2005, an impairment loss of \$0.8 million was recognized related to a property that was sold during July of 2005. Management does not believe that the values of its properties within the portfolio are impaired as of December 31, 2007.

Sale of Real Estate

The Company recognizes property sales in accordance with SFAS No. 66, "Accounting for Sales of Real Estate." The Company generally records the sales of operating properties and outparcels using the full accrual method at closing when the earnings process is deemed to be complete. Sales not qualifying for full recognition at the time of sale are accounted for under other appropriate deferral methods.

Real Estate Held-for Sale

The Company evaluates the held-for-sale classification of its real estate each quarter. Assets that are classified as held-for-sale are recorded at the lower of their carrying amount or fair value less cost to sell. Assets are generally classified as held-for-sale once management has initiated an active program to market them for sale and has received a firm purchase commitment. The results of operations of these real estate properties are reflected as discontinued operations in all periods reported.

On occasion, the Company will receive unsolicited offers from third parties to buy individual Company properties. Under these circumstances, the Company will classify the properties as held-for-sale when a sales contract is executed with no contingencies and the prospective buyer has funds at risk to ensure performance.

Deferred Costs

Fees and costs paid in the successful negotiation of leases have been deferred and are being amortized on a straight-line basis over the terms of the respective leases. Fees and costs incurred in connection with obtaining financing have been deferred and are being amortized over the term of the related debt obligation.

Management Contracts

Income from management contracts is recognized on an accrual basis as such fees are earned. The initial acquisition cost of the management contracts is being amortized over the estimated lives of the contracts acquired. Income from management contracts for the year ended December 31, 2005 is net of sub-management fees of \$0.3 million.

Revenue Recognition and Accounts and Notes Receivable

Leases with tenants are accounted for as operating leases. Minimum rents are recognized on a straight-line basis over the term of the respective leases, beginning when the tenant takes possession of the space. As of December 31, 2007 and 2006, included in rents receivable, net on the accompanying consolidated balance sheet, unbilled rents receivable relating to straight-lining of rents were \$8.4 million and \$5.6 million, respectively. Certain of these leases also provide for percentage rents based upon the level of sales achieved by the tenant. Percentage rent is recognized in the period when the tenants' sales breakpoint is met. In addition, leases typically provide for the reimbursement to the Company of real estate taxes, insurance and other property operating expenses. These reimbursements are recognized as revenue in the period the expenses are incurred.

The Company makes estimates of the uncollectability of its accounts receivable related to tenant revenues. An allowance for doubtful accounts has been provided against certain tenant accounts receivable that are estimated to be uncollectible. Once the amount is ultimately deemed to be uncollectible, it is written off. Rents receivable at December 31, 2007 and 2006 are shown net of an allowance for doubtful accounts of \$3.1 million and \$3.2 million, respectively.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued

Revenue Recognition and Accounts and Notes Receivable, continued

Interest income from notes receivable is recognized on an accrual basis based on the contractual terms of the notes. The Company reviews notes receivable on a quarterly basis and determined that all notes receivable are deemed to be collectible as of December 31, 2007.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents.

Restricted Cash and Cash in Escrow

Restricted cash and cash in escrow consist principally of cash held for real estate taxes, property maintenance, insurance, minimum occupancy and property operating income requirements at specific properties as required by certain loan agreements.

Income Taxes

The Company has made an election to be taxed, and believes it qualifies as a REIT under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"). To maintain REIT status for Federal income tax purposes, the Company is generally required to distribute at least 90% of its REIT taxable income to its stockholders as well as comply with certain other requirements as defined by the Code. Accordingly, the Company is not subject to federal corporate income tax to the extent that it distributes 100% of its REIT taxable income each year.

Although it may qualify for REIT status for Federal income tax purposes, the Company is subject to state income or franchise taxes in certain states in which some of its properties are located. In addition, taxable income from non-REIT activities managed through the Company's taxable REIT subsidiaries ("TRS") are subject to Federal, state and local income taxes.

TRS income taxes are accounted for under the asset and liability method as required by SFAS No. 109, "Accounting for Income Taxes." Under the asset and liability method, deferred income taxes are recognized for the temporary differences between the financial reporting basis and the tax basis of the TRS assets and liabilities.

The Company adopted the provisions of the FASB financial Interpretation No. 48, "Accounting for Uncertainty in Income Taxes – an interpretation of SFAS No. 109" as of January 1, 2007. The Company believes that it has appropriate support for the income tax positions taken and, as such, does not have any uncertain tax positions that result in a material impact on the Company's financial position or results of operation. The prior three years income tax returns are subject to review by the Internal Revenue Service. The Company's policy relating to interest and penalties is to recognize them as a component of the provision for income taxes.

Stock-based Compensation

The Company accounts for stock options pursuant to SFAS No. 123R "Accounting for Stock-Based Compensation". As such, all stock options are reflected as compensation expense in the Company's consolidated financial statements over their vesting period based on the fair value at the date the stock option was granted.

Recent Accounting Pronouncements

In September 2006, the SEC issued Staff Accounting Bulletin (SAB) No. 108 "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements." This Bulletin provides guidance on the consideration of the effects of prior year misstatements in quantifying current year misstatements for the purpose of a materiality assessment. The guidance in this Bulletin must be applied to financial reports covering the first fiscal year ending after November 15, 2006. As a result of the adoption of SAB No. 108, the Company recorded a \$1.8 million cumulative effect of straight-line rent adjustment for prior years effective January 1, 2006. This adjustment was the result of changing the calculation of tenants straight-line rent from rent commencement date to the date the tenant took possession of the space. This adjustment is reflected in the Company's balance sheet as an increase to both rents receivable, net and retained earnings.

During September 2006, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 157 "Fair Value Measurements." This SFAS defines fair value, establishes a framework for measuring fair value in GAAP, and expands disclosures about fair value measurements. This statement applies to accounting pronouncements that require or permit fair value measurements, except for share-based payment transactions under SFAS No. 123. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007. As SFAS No. 157 does not require any new fair value measurements or remeasurements of previously computed fair values, the Company does not believe adoption of SFAS No. 157 will have a material effect on its financial statements.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization, Basis of Presentation and Summary of Significant Accounting Policies, continued**Recent Accounting Pronouncements, continued**

On February 15, 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities". This statement permits companies and not-for-profit organizations to make a one-time election to carry eligible types of financial assets and liabilities at fair value, even if fair value measurement is not required under GAAP. SFAS 159 is effective for fiscal years beginning after November 15, 2007. The Company is currently evaluating the effect of the adoption of SFAS No. 159.

On August 31, 2007, the FASB issued a proposed FASB Staff Position (the "Proposed FSP") that affects the accounting for the Company's convertible notes payable. The Proposed FSP requires the initial debt proceeds from the sale of the Company's convertible notes to be allocated between a liability component and an equity component. The resulting debt discount must be amortized over the period the debt is expected to remain outstanding as additional interest expense. The Proposed FSP, if adopted, would be effective for fiscal years beginning after December 15, 2007 and would require retroactive application. The Company is currently evaluating the impact that this Proposed FSP would have on its financial statements if adopted.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements," which, among other things, provides guidance and establishes amended accounting and reporting standards for a parent company's noncontrolling or minority interest in a subsidiary. The Company is currently evaluating the impact of adopting the Statement, which is effective for fiscal years beginning on or after December 15, 2008.

In December 2007, the FASB issued SFAS No. 141R, "Business Combinations," which replaces SFAS No. 141 Business Combinations. SFAS No. 141R, among other things, establishes principles and requirements for how an acquirer entity recognizes and measures in its financial statements the identifiable assets acquired (including intangibles), the liabilities assumed and any noncontrolling interest in the acquired entity. The Company is currently evaluating the impact of adopting the Statement, which is effective for fiscal years beginning on or after December 15, 2008.

Comprehensive income

The following table sets forth comprehensive income for the years ended December 31, 2007, 2006 and 2005:

(dollars in thousands)	Years ended December 31,		
	2007	2006	2005
Net income	\$ 27,270	\$ 39,013	\$ 20,626
Other comprehensive (loss) income	(719)	(222)	3,168
Comprehensive income	<u>\$ 26,551</u>	<u>\$ 38,791</u>	<u>\$ 23,794</u>

Other comprehensive income relates to the changes in the fair value of derivative instruments accounted for as cash flow hedges and the amortization, which is included in interest expense, of derivative instruments.

The following table sets forth the change in accumulated other comprehensive loss for the years ended December 31, 2007 and 2006:

Accumulated other comprehensive loss

(dollars in thousands)	Years ended December 31,	
	2007	2006
Beginning balance	\$ (234)	\$ (12)
Unrealized (loss) gain on valuation of derivative instruments and amortization of derivative	(719)	(222)
Ending balance	<u>\$ (953)</u>	<u>\$ (234)</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

2. Acquisition and Disposition of Properties and Discontinued Operations

A. Acquisition and Disposition of Properties

Currently the primary vehicles for the Company's acquisitions are Funds I, II and III (Note 1).

Acquisitions

On March 20, 2007, the Company purchased a retail commercial condominium at 200 West 54th Street located in Manhattan, New York. The 10,000 square foot property was acquired for \$36.4 million.

Additionally, on March 20, 2007, the Company purchased a single-tenant building located at 1545 East Service Road in Staten Island, New York for \$17.0 million.

On May 31, 2007, the Company purchased a property located on Atlantic Avenue in Brooklyn, New York for \$5.0 million. Redevelopment plans for the property call for the demolition of the existing structure and the construction of a 110,000 square foot self-storage facility.

On June 13, 2007, the Company (approximately 25%), along with an unaffiliated partner (approximately 75%), acquired a leasehold interest in The Gallery at Fulton Street and adjacent parking garage located in downtown Brooklyn, New York for \$115.0 million. The redevelopment plans include the demolition of the existing improvements and the construction of a mixed-use project to be called CityPoint.

On October 31, 2007, the Company, in conjunction with an unaffiliated partner, P/A Associates, LLC ("Acadia P/A") acquired a 530,000 square foot warehouse building in Canarsie, Brooklyn for approximately \$21.0 million. The development plan for this property includes the demolition of a portion of the warehouse and the construction of a 320,000 square foot mixed-use project consisting of retail, office, cold-storage and self-storage.

On November 1, 2007, the Company, and an unaffiliated partner acquired a property in Westport, Connecticut for approximately \$17.0 million. The plan is to redevelop the existing building into 30,000 square feet of retail and residential use.

On November 5, 2007, the Company, through Acadia P/A, acquired a property in Sheepshead Bay, Brooklyn for approximately \$20.0 million. The redevelopment plan includes the demolition of the existing structures and the construction of a 240,000 square foot shopping center.

On January 12, 2006, the Company closed on a 19,265 square foot retail building in the Lincoln Park district in Chicago. The property was acquired from an affiliate of Klaff for a purchase price of \$9.9 million, including the assumption of existing mortgage debt in the principal amount of \$3.8 million.

On January 24, 2006, the Company acquired a 60% interest in the entity which owns the A&P Shopping Plaza located in Boonton, New Jersey. The property is a 63,000 square foot shopping center anchored by a 49,000 square foot A&P Supermarket. A portion of the remaining 40% interest is owned by a principal of P/A Associates, LLC. The interest was acquired for \$3.2 million.

On June 16, 2006, the Company purchased 8400 and 8625 Germantown Road, totaling 40,570 square feet, in Philadelphia, Pennsylvania for \$16.0 million. The Company assumed a \$10.1 million first mortgage loan which has a maturity date of June 11, 2013.

On September 21, 2006, the Company purchased 2914 Third Avenue, a 41,305 square foot building located in the Bronx, New York for \$18.5 million.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

2. Acquisition and Disposition of Properties and Discontinued Operations, continued**Dispositions**

On November 15, 2007, the Company sold the Amherst Marketplace and Sheffield Crossing, shopping centers located in Ohio, for \$26.0 million, which resulted in a \$7.5 million gain on sale.

On December 13, 2007, the Company sold a residential complex in Columbia, Missouri for \$15.5 million, which resulted in a \$2.0 million loss on sale.

On November 3, 2006, the Company sold the Bradford Towne Centre, a 257,123 square foot shopping center located in Towanda, Pennsylvania, for \$16.0 million, which resulted in a \$5.6 million gain on sale.

On November 28, 2006, the Company sold three properties located in northeastern Pennsylvania as follows:

(dollars in thousands)	<u>Sales Price</u>	<u>Gain</u>	<u>GLA</u>
Property			
Greenridge Plaza	\$ 10,600	\$ 4,753	191,767
Luzerne Street Center	3,600	2,521	58,035
Pittston Plaza	6,000	487	79,498
Total	<u>\$ 20,200</u>	<u>\$ 7,761</u>	<u>329,300</u>

On December 14, 2006, the Company sold the Soundview Marketplace, a 183,815 square foot shopping center in Port Washington, New York, for \$24.0 million which resulted in a \$7.9 million gain on the sale.

On July 7, 2005, the Company sold the Berlin Shopping Center for \$4.0 million. An impairment loss of \$0.8 million was recognized for the year ended December 31, 2005 to reduce the carrying value of this asset to fair value less costs to sell.

B. Discontinued Operations

SFAS No. 144 requires discontinued operations presentation for disposals of a "component" of an entity. In accordance with SFAS No. 144, for all periods presented, the Company has reclassified its consolidated statements of income to reflect income and expenses for sold properties (Note 2A), as discontinued operations and reclassified its consolidated balance sheets to reflect assets and liabilities related to such properties as assets and liabilities related to discontinued operations. Interest expense specific to a discontinued operation property is reflected in discontinued operations.

The combined results of operations of sold properties are reported separately as discontinued operations for the years ended December 31, 2007, 2006 and 2005.

The combined assets and liabilities and results of operations of the properties classified as discontinued operations are summarized as follows:

(dollars in thousands)	December 31,
	2006
ASSETS	
Net real estate	\$ 32,616
Rent receivable, net	1,080
Other assets	2,537
Total assets of discontinued operations	<u>\$ 36,233</u>
LIABILITIES	
Mortgage notes payable	\$ 26,955
Accounts payable and accrued expenses	665
Other liabilities	1,140
Total liabilities of discontinued operations	<u>\$ 28,760</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

2. Acquisition and Disposition of Properties and Discontinued Operations, continued
B. Discontinued Operations, continued

(dollars in thousands)	Years ended December 31,		
	2007	2006	2005
Revenues	\$ 6,471	\$ 15,359	\$ 16,278
Operating expenses	4,460	9,590	11,338
Interest expense	1,634	2,890	2,788
Operating Income	<u>377</u>	<u>2,879</u>	<u>2,152</u>
Impairment of real estate	¾	¾	(770)
Gain (loss) on sale of properties	5,271	20,974	(50)
Minority interest	(111)	(462)	(26)
Income from discontinued operations	<u>\$ 5,537</u>	<u>\$ 23,391</u>	<u>\$ 1,306</u>

3. Segment Reporting

The Company has three reportable segments: core portfolio, opportunity funds and other which, primarily consists of management fee and interest income. The accounting policies of the segments are the same as those described in the summary of significant accounting policies. The Company evaluates property performance primarily based on net operating income before depreciation, amortization and certain nonrecurring items. Investments in the core portfolio are typically held long-term. Given the finite life of the opportunity funds, these investments are typically held for shorter terms. Fees earned by the Company as general partner/member of the opportunity funds are eliminated in the Company's consolidated financial statements. The Company previously reported two reportable segments, retail properties and multi-family properties. During December of 2007, the Company sold the majority of its multi-family properties and realigned the segments to reflect the way the Company now manages the business. The following table sets forth certain segment information for the Company, reclassified for discontinued operations, as of and for the years ended December 31, 2007, 2006, and 2005 (does not include unconsolidated affiliates):

2007					
(dollars in thousands)	Core Portfolio	Opportunity Funds	Other	Elimination	Total
Revenues	\$ 62,970	\$ 20,672	\$ 38,294	\$ (20,367)	\$ 101,569
Property operating expenses and real estate taxes	18,770	5,069	2,000	(280)	25,559
Other expenses	25,239	13,032	¾	(15,213)	23,058
Net income before depreciation and amortization	<u>\$ 18,961</u>	<u>\$ 2,571</u>	<u>\$ 36,294</u>	<u>\$ (4,874)</u>	<u>\$ 52,952</u>
Depreciation and amortization	<u>\$ 17,510</u>	<u>\$ 9,381</u>	<u>\$ 615</u>	<u>\$ ¾</u>	<u>\$ 27,506</u>
Interest expense	<u>\$ 17,439</u>	<u>\$ 5,852</u>	<u>\$ ¾</u>	<u>\$ (516)</u>	<u>\$ 22,775</u>
Real estate at cost	<u>\$ 460,591</u>	<u>\$ 377,461</u>	<u>\$ 20,380</u>	<u>\$ (4,358)</u>	<u>\$ 854,074</u>
Total assets	<u>\$ 569,538</u>	<u>\$ 419,045</u>	<u>\$ 14,787</u>	<u>\$ (4,358)</u>	<u>\$ 999,012</u>
Expenditures for real estate and improvements	<u>\$ 58,124</u>	<u>\$ 151,652</u>	<u>\$ 451</u>	<u>\$ ¾</u>	<u>\$ 210,227</u>

Reconciliation to net income

Net property income before depreciation and amortization	\$ 52,952
Depreciation and amortization	(27,506)
Equity in earnings of unconsolidated partnerships	6,619
Interest expense	(22,775)
Income tax provision	297
Minority interest	9,063
Income from discontinued operations	5,537
Extraordinary item	3,677
Net income	<u>\$ 27,270</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

3. Segment Reporting, continued**2006**

(dollars in thousands)	<u>Core Portfolio</u>	<u>Opportunity Funds</u>	<u>Other</u>	<u>Elimination</u>	<u>Total</u>
Revenues	\$ 58,450	\$ 19,291	\$ 26,654	\$ (8,595)	\$ 95,800
Property operating expenses and real estate taxes	16,655	4,710	1,916	(329)	22,952
Other expenses	21,610	4,410	¾	(6,238)	19,782
Net income before depreciation and amortization	<u>\$ 20,185</u>	<u>\$ 10,171</u>	<u>\$ 24,738</u>	<u>\$ (2,028)</u>	<u>\$ 53,066</u>
Depreciation and amortization	<u>\$ 15,212</u>	<u>\$ 9,517</u>	<u>\$ 632</u>	<u>\$ ¾</u>	<u>\$ 25,361</u>
Interest expense	<u>\$ 14,160</u>	<u>\$ 6,298</u>	<u>\$ 243</u>	<u>\$ (324)</u>	<u>\$ 20,377</u>
Real estate at cost	<u>\$ 407,858</u>	<u>\$ 223,748</u>	<u>\$ 20,149</u>	<u>\$ (1,704)</u>	<u>\$ 650,051</u>
Total assets	<u>\$ 584,544</u>	<u>\$ 254,586</u>	<u>\$ 14,266</u>	<u>\$ (1,704)</u>	<u>\$ 851,692</u>
Expenditures for real estate and improvements	<u>\$ 62,725</u>	<u>\$ 24,092</u>	<u>\$ 192</u>	<u>\$ ¾</u>	<u>\$ 87,009</u>

Reconciliation to net income

Net property income before depreciation and amortization	\$ 53,066
Depreciation and amortization	(25,361)
Equity in earnings of unconsolidated partnerships	2,559
Interest expense	(20,377)
Income tax (benefit)	(508)
Minority interest	5,227
Income from discontinued operations	23,391
Net income	<u>\$ 39,013</u>

2005

(dollars in thousands)	<u>Core Portfolio</u>	<u>Opportunity Funds</u>	<u>Other</u>	<u>Elimination</u>	<u>Total</u>
Revenues	\$ 52,996	\$ 32,045	\$ 18,555	\$ (9,631)	\$ 93,965
Property operating expenses and real estate taxes	14,713	5,754	1,833	¾	22,300
Other expenses	15,382	8,888	¾	(8,117)	16,153
Net income before depreciation and amortization	<u>\$ 22,901</u>	<u>\$ 17,403</u>	<u>\$ 16,722</u>	<u>\$ (1,514)</u>	<u>\$ 55,512</u>
Depreciation and amortization	<u>\$ 13,546</u>	<u>\$ 10,540</u>	<u>\$ 611</u>	<u>\$ ¾</u>	<u>\$ 24,697</u>
Interest expense	<u>\$ 9,394</u>	<u>\$ 7,503</u>	<u>\$ 134</u>	<u>\$ (342)</u>	<u>\$ 16,689</u>
Real estate at cost	<u>\$ 337,344</u>	<u>\$ 314,773</u>	<u>\$ 19,872</u>	<u>\$ (1,172)</u>	<u>\$ 670,817</u>
Total assets	<u>\$ 436,136</u>	<u>\$ 389,456</u>	<u>\$ 16,784</u>	<u>\$ (1,172)</u>	<u>\$ 841,204</u>
Expenditures for real estate and improvements	<u>\$ 25,355</u>	<u>\$ 105,448</u>	<u>\$ 274</u>	<u>\$ ¾</u>	<u>\$ 131,077</u>

Reconciliation to net income

Net property income before depreciation and amortization	\$ 55,512
Depreciation and amortization	(24,697)
Equity in earnings of unconsolidated partnerships	21,280
Interest expense	(16,689)
Income tax provision	2,140
Minority interest	(13,946)
Income from discontinued operations	1,306
Net income	<u>\$ 20,626</u>

**ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

4. Investments

A. Investments In and Advances to Unconsolidated Affiliates

Retailer Controlled Property Venture (“RCP Venture”)

During January of 2004, the Company entered into the RCP Venture with Klaff Realty, L.P. (“Klaff”) and Lubert-Adler Management, Inc. for the purpose of making investments in surplus or underutilized properties owned by retailers. Through December 31, 2007, the Company has invested \$55.4 million through the RCP Venture on a non-recourse basis. Cash flow is to be distributed to the RCP Venture partners in accordance with their ownership interests until they have received a 10% cumulative return and a full return of all contributions. Thereafter, remaining cash flow is to be distributed 20% to Klaff and 80% to the partners (including Klaff).

Mervyns Department Stores

During September of 2004, the RCP Venture invested in a consortium to acquire the Mervyns Department Store chain from Target Corporation. The gross acquisition price of \$1.2 billion was financed with \$800 million of debt and \$400 million of equity. The Company’s share of this investment was \$23.9 million. For the year ended December 31, 2007, the Company made an additional investment of \$2.2 million in Mervyns through the RCP Venture.

For the year ended December 31, 2005, the Company made add-on investments in Mervyns totaling \$1.3 million. The Company accounts for these add-on investments using the cost method due to the minor ownership interest and the inability to exert influence over the partnership’s operating and financial policies.

Albertson’s

During June of 2006, the RCP Venture made its second investment as part of an investment consortium, acquiring Albertson’s and Cub Foods, of which the Company’s share was \$20.7 million. During February of 2007, the Company received a cash distribution of \$44.4 million from this investment which was sourced from the disposition of certain operating stores and a refinancing of the remaining assets held by Albertson’s. The distribution in excess of the Company’s invested capital was reflected as an extraordinary gain of \$30.2 million. This gain was characterized as extraordinary consistent with the accounting treatment by Albertson’s which reflected the excess of fair value of net assets acquired over the purchase price as an extraordinary gain. The Company received additional distributions from this investment totaling \$8.8 million for the year ended December 31, 2007.

For the years ended December 31, 2007 and 2006, the Company made add-on investments in Albertson’s totaling \$2.8 million and received distributions totaling \$0.8 million. The Company accounts for these add-on investments using the cost method due to the minor ownership interest and the inability to exert influence over the partnership’s operating and financial policies.

Other Investments

During 2006, the Company made additional investments of \$1.1 million in Shopko and \$0.7 million in Marsh through the RCP Venture. For the year ended December 31, 2007, the Company received a \$1.1 million cash distribution from the Shopko investment representing 100% of its invested capital.

During July of 2007, the RCP Venture acquired a portfolio of 87 retail properties from Rex Stores Corporation. The Company’s share of this investment was \$2.7 million.

The Company accounts for the two above investments using the cost method due to its minor ownership interest and the inability to exert influence over the partnership’s operating and financial policies.

The following table summarizes the RCP Venture investments from inception through December 31, 2007:

Investor	Investment	Year acquired	Invested capital	Distributions	Operating Partnership Share	
					Invested capital	Distributions
Mervyns I and Mervyns II	Mervyns	2004	\$ 26,072	\$ 45,966	\$ 4,901	\$ 11,251
	Mervyns add-on					
Mervyns I and Mervyns II	investments	2005	1,342	1,342	283	283
Mervyns II	Albertson’s	2006	20,717	53,206	4,239	9,847
	Albertson’s add-on					
Mervyns II	investments	2006/2007	2,765	833	386	93
Fund II	Shopko	2006	1,100	1,100	220	220
Fund II	Marsh	2006	667	¾	133	¾
Mervyns II	Rex	2007	2,701	¾	535	¾
Total			<u>\$ 55,364</u>	<u>\$ 102,447</u>	<u>\$ 10,697</u>	<u>\$ 21,694</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. Investments, continued**Brandywine Portfolio**

The Company owns a 22.2% interest in a one million square foot retail portfolio located in Wilmington, Delaware (the “Brandywine Portfolio”) which is accounted for using the equity method.

Crossroads

The Company owns a 49% interest in the Crossroads Joint Venture and Crossroads II (collectively, “Crossroads”), which collectively own a 311,000 square foot shopping center located in White Plains, New York which is accounted for using the equity method.

Other Investments**Fund I Investments**

Fund I has joint ventures with unaffiliated third-party investors in the ownership and operation of the following shopping centers, which are accounted for using the equity method of accounting.

<u>Shopping Center</u>	<u>Location</u>	<u>Year Acquired</u>	<u>Gross Leasable Area</u>
Haygood Shopping Center	Virginia Beach, VA	2004	178,533
Sterling Heights Shopping Center	Detroit, MI	2004	154,835
Total			<u><u>333,368</u></u>

In November 2006, Fund I completed the purchase of the remaining 50% interest in the Tarrytown Centre, a 35,000 square foot center located in Westchester, New York, from its unaffiliated partner. This investment, which had previously been accounted for using the equity method, is now consolidated.

Fund II Investments

Fund II has invested \$1.2 million as a 50% owner in an entity which has a leasehold interest in a former Levitz Furniture store located in Rockville, Maryland, which is accounted for using the equity method.

Fund II’s approximately 25% investment in CityPoint (Note 2) is accounted for using the equity method. This investment is a variable interest entity of which the Company is not the primary beneficiary. The Company’s maximum exposure is its current investment balance of \$28.9 million.

In addition to these investments, the Company made advances to unconsolidated affiliates. At December 31, 2007 and 2006, advances to unconsolidated affiliates totaled \$4.0 million and \$2.3 million, respectively.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. Investments, continued**A. Investments In and Advances to Unconsolidated Affiliates, continued**

The following tables summarize the Company's investment in unconsolidated subsidiaries as of December 31, 2007, December 31, 2006 and December 31, 2005.

(dollars in thousands)	December 31, 2007					Total
	RCP Venture	CityPoint	Brandywine Portfolio	Crossroads	Other Investments	
Balance Sheets						
Assets						
Rental property, net	\$ —	\$ 145,775	\$ 136,942	\$ 5,552	\$ 38,137	\$ 326,406
Investment in unconsolidated affiliates	195,672	—	—	—	—	195,672
Other assets	—	3,046	10,631	4,372	6,650	24,699
Total assets	<u>\$ 195,672</u>	<u>\$ 148,821</u>	<u>\$ 147,573</u>	<u>\$ 9,924</u>	<u>\$ 44,787</u>	<u>\$ 546,777</u>
Liabilities and partners' equity						
Mortgage note payable	\$ —	\$ 34,000	\$ 166,200	\$ 64,000	\$ 33,084	\$ 297,284
Other liabilities	—	2,213	9,629	1,112	2,307	15,261
Partners equity (deficit)	195,672	112,608	(28,256)	(55,188)	9,396	234,232
Total liabilities and partners' equity	<u>\$ 195,672</u>	<u>\$ 148,821</u>	<u>\$ 147,573</u>	<u>\$ 9,924</u>	<u>\$ 44,787</u>	<u>\$ 546,777</u>
Company's investment in and advances to unconsolidated affiliates	<u>\$ 9,813</u>	<u>\$ 28,890</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 5,951</u>	<u>\$ 44,654</u>
Share of distributions in excess of share of income and investment in unconsolidated affiliates	<u>\$ —</u>	<u>\$ —</u>	<u>\$ (7,822)</u>	<u>\$ (12,185)</u>	<u>\$ —</u>	<u>\$ (20,007)</u>

(dollars in thousands)	December 31, 2006					Total
	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments		
Balance Sheets						
Assets						
Rental property, net	\$ —	\$ 127,146	\$ 6,017	\$ 43,660	\$ 176,823	
Investment in unconsolidated affiliates	385,444	—	—	—	385,444	
Other assets	—	6,747	4,511	6,632	17,890	
Total assets	<u>\$ 385,444</u>	<u>\$ 133,893</u>	<u>\$ 10,528</u>	<u>\$ 50,292</u>	<u>\$ 580,157</u>	
Liabilities and partners' equity						
Mortgage note payable	\$ —	\$ 166,200	\$ 64,000	\$ 28,558	\$ 258,758	
Other liabilities	—	12,709	1,858	8,862	23,429	
Partners equity (deficit)	385,444	(45,016)	(55,330)	12,872	297,970	
Total liabilities and partners' equity	<u>\$ 385,444</u>	<u>\$ 133,893</u>	<u>\$ 10,528</u>	<u>\$ 50,292</u>	<u>\$ 580,157</u>	
Company's investment in and advances to unconsolidated affiliates	<u>\$ 24,894</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 8,439</u>	<u>\$ 33,333</u>	
Share of distributions in excess of share of income and investment in unconsolidated affiliates	<u>\$ —</u>	<u>\$ (10,541)</u>	<u>\$ (11,187)</u>	<u>\$ —</u>	<u>\$ (21,728)</u>	

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. Investments, continued**A. Investments In and Advances to Unconsolidated Affiliates, continued**

(dollars in thousands)	Year ended December 31, 2007				
	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
Statements of Operations					
Total revenue	\$ —	\$ 20,252	\$ 8,518	\$ 5,862	\$ 34,632
Operating and other expenses	—	5,620	3,095	1,396	10,111
Interest expense	—	10,102	3,485	2,333	15,920
Equity in earnings of affiliates	46,416	—	—	—	46,416
Equity in earning of unconsolidated affiliates extraordinary gain	151,000	—	—	—	151,000
Depreciation and amortization	—	3,269	475	4,439	8,183
Net income (loss)	<u>\$ 197,416</u>	<u>\$ 1,261</u>	<u>\$ 1,463</u>	<u>\$ (2,306)</u>	<u>\$ 197,834</u>
Company's share of net income	\$ 3,312	\$ 232	\$ 717	\$ 2,750	\$ 7,011
Amortization of excess investment	—	—	392	—	392
Company's share of net income before extraordinary gain	<u>\$ 3,312</u>	<u>\$ 232</u>	<u>\$ 325</u>	<u>\$ 2,750</u>	<u>\$ 6,619</u>
Company's share of extraordinary gain	<u>\$ 30,200</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 30,200</u>

(dollars in thousands)	Year ended December 31, 2006				
	RCP Venture	Brandywine Portfolio	Crossroads	Other Investments	Total
Statements of Operations					
Total revenue	\$ —	\$ 18,324	\$ 9,208	\$ 3,707	\$ 31,239
Operating and other expenses	—	4,800	3,121	2,295	10,216
Interest expense	—	12,066	3,485	1,448	16,999
Equity in (losses) of affiliates	(4,554)	—	—	—	(4,554)
Depreciation and amortization	—	2,947	580	1,416	4,943
Net (loss) income	<u>\$ (4,554)</u>	<u>\$ (1,489)</u>	<u>\$ 2,022</u>	<u>\$ (1,452)</u>	<u>\$ (5,473)</u>
Company's share of net income	\$ 2,212	\$ (31)	\$ 991	\$ (221)	\$ 2,951
Amortization of excess investment	—	—	392	—	392
Company's share of net income (loss)	<u>\$ 2,212</u>	<u>\$ (31)</u>	<u>\$ 599</u>	<u>\$ (221)</u>	<u>\$ 2,559</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

4. Investments, continued**A. Investments In and Advances to Unconsolidated Affiliates, continued**

(dollars in thousands)	Year ended December 31, 2005			Total
	RCP Venture	Crossroads	Other Investments	
Statements of Operations				
Total revenue	\$ —	\$ 8,772	\$ 3,778	\$ 12,550
Operating and other expenses	—	2,581	2,206	4,787
Interest expense	—	3,632	906	4,538
Equity in earnings of affiliates	181,543	—	—	181,543
Depreciation and amortization	—	654	927	1,581
Net income (loss)	\$ 181,543	\$ 1,905	\$ (261)	\$ 183,187
Company's share of net income	20,902	988	(218)	21,672
Amortization of excess investment	—	392	—	392
Company's share of net income (loss)	<u>\$ 20,902</u>	<u>\$ 596</u>	<u>\$ (218)</u>	<u>\$ 21,280</u>

B. Notes Receivable and Preferred Equity Investment

During March of 2005, the Company made a \$20.0 million preferred equity investment ("Preferred Equity Investment") in Levitz SL, L.L.C. ("Levitz SL"), the owner of fee and leasehold interests in 30 current or former Levitz Furniture Store locations (the "Levitz Properties"), totaling 2.5 million square feet.

During June 2006, the Company converted the Preferred Equity Investment to a first mortgage loan and made an additional advance bringing the total outstanding amount to \$31.3 million. The loan matures on May 31, 2008 and bears interest at a rate of 10.5%. During 2006, Levitz SL sold one of the Levitz Properties located in Northridge, California and used \$20.4 million of the proceeds to pay down the loan. During 2007, Levitz SL sold an additional Levitz Property located in St. Paul Minnesota and used \$4.8 million of the proceeds to pay down the first mortgage loan. As of December 31, 2007 and 2006, the loan balance amounted to \$6.1 million and \$10.9 million, respectively, and was secured by fee and leasehold mortgages as well as a pledge of the entities owning 13 of the remaining Levitz Properties totaling 1.3 million square feet. Although Levitz Furniture filed for Chapter 7 bankruptcy protection during November 2007, the Company believes the underlying value of the real estate is sufficient to recover the principal and interest due under the mortgage.

5. Deferred Charges

Deferred charges consist of the following as of December 31, 2007 and 2006:

(dollars in thousands)	December 31,	
	2007	2006
Deferred financing costs	\$ 18,756	\$ 15,684
Deferred leasing and other costs	20,399	19,342
	39,155	35,026
Accumulated amortization	(17,330)	(14,277)
	<u>\$ 21,825</u>	<u>\$ 20,749</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

6 Acquired Lease Intangibles

Upon acquisitions of real estate, the Company assesses the fair value of acquired assets (including land, buildings and improvements, and identified intangibles such as above and below market leases, acquired in-place leases and customer relationships) and acquired liabilities in accordance with SFAS No. 141. The intangibles are amortized over the remaining non-cancelable terms of the respective leases

The scheduled amortization of acquired lease intangible assets as of December 31, 2007 is as follows:

(dollars in thousands)	
2008	\$ 2,744
2009	2,222
2010	1,782
2011	1,258
2012	777
Thereafter	7,320
	<u>\$ 16,103</u>

The scheduled amortization of acquired lease intangible liabilities as of December 31, 2007 is as follows:

(dollars in thousands)	
2008	\$ (827)
2009	(694)
2010	(631)
2011	(634)
2012	(588)
Thereafter	(2,277)
	<u>\$ (5,651)</u>

7. Mortgage Loans

At December 31, 2007 and 2006, mortgage notes payable, excluding the net valuation premium on the assumption of debt, aggregated \$402.0 million and \$318.3 million, respectively, and were collateralized by 49 and 52 properties and related tenant leases, respectively. Interest rates on the Company's outstanding mortgage indebtedness ranged from 4.75% to 8.5% with maturities that ranged from March 2008 to November 2032. Certain loans are cross-collateralized and cross-defaulted. The loan agreements contain customary representations, covenants and events of default. Certain loan agreements require the Company to comply with certain affirmative and negative covenants, including the maintenance of certain debt service coverage and leverage ratios.

The following reflects mortgage loan activity for the year ended December 31, 2007:

During 2007, the Company drew an additional \$17.4 million on two existing construction loans. During September 2007, the Company paid off the remaining \$19.2 million balance of one of these loans. As of December 31, 2007, the outstanding balance on the remaining construction loan was \$10.0 million.

During January 2007, the Company paid off a \$21.5 million loan.

During January 2007, the Company closed on a \$26.0 million loan secured by a property, which bears interest at a fixed rate of 5.4% and matures on February 11, 2017. A portion of the proceeds was used to pay off an existing \$15.7 million loan.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

7. Mortgage Loans, continued

During March 2007, the Company closed on a \$30.0 million revolving facility which bears interest at LIBOR plus 125 basis points and matures on March 29, 2010. As of December 31, 2007, this line of credit was fully available.

During 2007, the Company borrowed \$34.5 million on an existing credit facility.

During July 2007, the Company closed on a new \$26.3 million mortgage loan secured by a property. The loan bears interest at a fixed rate of 5.9% and matures on August 1, 2017. A portion of the proceeds were used to pay down an existing \$12.5 million loan.

During September 2007, the Company extended a \$19.0 million loan that bears fixed interest at 5.8% to a new maturity date of March 1, 2008 and also extended a \$2.9 million loan that bears interest at LIBOR plus 200 basis points to a new maturity date of October 5, 2008.

On September 12, 2007, the Company closed on a \$25.5 million loan secured by a property, which bears interest at a fixed rate of 5.8% and matures on October 1, 2017. A portion of the proceeds were used to pay down an existing \$19.2 million construction loan.

During October 2007, the Company closed on a \$75.0 million revolving facility, which bears interest at the commercial paper rate plus 50 basis points and matures on October 10, 2011. As of December 31, 2007, this facility was fully available.

On October 30, 2007, the Company closed on a \$9.8 million loan secured by a property, which bears interest at LIBOR plus 165 basis points and matures on October 30, 2010.

During October 2007, the Company closed on a construction loan for a property for \$95.3 million. This loan bears interest at LIBOR plus 175 basis points and matures on October 4, 2009. A portion of the proceeds were used to pay down an existing \$18.0 million loan. As of December 31, 2007, the amount outstanding on this loan was \$37.3 million.

During November and December 2007, in conjunction with the sale of four properties, the Company paid off \$26.5 million of debt.

During December 2007, the Company closed on a construction loan for a property for \$35.7 million. This loan bears interest at a fixed rate of 7.2%. Based upon meeting certain conditions, this loan will become permanent after a 2-year period and the interest rate will be adjusted. This loan matures on January 1, 2020. As of December 31, 2007, there was no outstanding balance on this loan.

During December 2007, the Company closed on a construction loan for a property for \$16.2 million. This loan bears interest at a fixed rate of 7.1%. Based upon meeting certain conditions, this loan will become permanent after a 2-year period and the interest rate will be adjusted. This loan matures on January 1, 2020. As of December 31, 2007, there was no outstanding balance on this loan.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

7. Mortgage Loans, continued

The following table summarizes our mortgage indebtedness as of December 31, 2007 and December 31, 2006:

(dollars in thousands)	<u>December 31, 2007</u>	<u>December 31, 2006</u>	<u>Interest Rate at December 31, 2007</u>	<u>Maturity</u>	<u>Properties Encumbered</u>	<u>Payment Terms</u>
Mortgage notes payable – variable-rate						
Washington Mutual Bank, FA	\$ —	\$ 21,524	6.10% (LIBOR + 1.50%)	4/1/2011	(1)	(29)
Bank of America, N.A.	9,781	9,925	6.00% (LIBOR + 1.40%)	6/29/2012	(2)	(29)
RBS Greenwich Capital	30,000	30,000	6.00% (LIBOR + 1.40%)	4/1/2008	(3)	(30)
Bank of America, N.A.	—	6,424	5.85% (LIBOR + 1.25%)	12/31/2008	(4)	(30)
PNC Bank, National Association	9,990	5,363	6.25% (LIBOR + 1.65%)	5/18/2009	(5)	(36)
Bank One, N.A.	2,818	2,939	6.60% (LIBOR + 2.00%)	10/5/2008	(6)	(35)
Bank of China, New York Branch	—	18,000	6.35% (LIBOR + 1.75%)	11/1/2007	(7)	(30)
Bank of America, N.A.	15,773	16,000	5.90% (LIBOR + 1.30%)	12/1/2011	(8)	(29)
Bank of America, N.A.	—	—	5.85% (LIBOR + 1.25%)	12/1/2010	(9)	(31)
Anglo Irish Bank Corporation	9,800	—	6.25% (LIBOR + 1.65%)	10/30/2010	(10)	(30)
Eurohypo AG	37,263	—	6.35% (LIBOR + 1.75%)	10/4/2009	(7)	(36)
Bank of America, N.A./Bank of New York	34,500	—	5.35% (LIBOR + 0.75%)	3/1/2008	(11)	(30)
Bank of America, N.A.	—	—	4.75% (Commercial Paper + 0.50%)	10/9/2011	(12)	(30)
Interest rate swaps (41)	<u>(34,284)</u>	<u>(16,002)</u>				
Total variable-rate debt	<u>115,641</u>	<u>94,173</u>				
Mortgage notes payable – fixed-rate						
Sun America Life Insurance Company	\$ —	\$ 12,665	6.46%	7/1/2007	(13)	(29)
RBS Greenwich Capital	—	15,672	5.19%	6/1/2013	(14)	(29)
RBS Greenwich Capital	14,752	14,940	5.64%	9/6/2014	(15)	(29)
RBS Greenwich Capital	17,600	17,600	4.98%	9/6/2015	(16)	(32)
RBS Greenwich Capital	12,500	12,500	5.12%	11/6/2015	(17)	(33)
Bear Stearns Commercial	34,600	34,600	5.53%	1/1/2016	(18)	(34)
Bear Stearns Commercial	20,500	20,500	5.44%	3/1/2016	(19)	(30)
LaSalle Bank, N.A.	3,727	3,782	8.50%	4/11/2028	(20)	(29)
GMAC Commercial	8,451	8,565	6.40%	11/1/2032	(21)	(29)
Column Financial, Inc.	9,834	9,997	5.45%	6/11/2013	(22)	(29)
Merrill Lynch Mortgage Lending, Inc.	23,500	23,500	6.06%	8/29/2016	(23)	(37)
Bank of China	19,000	19,000	5.83%	3/1/2008	(24)	(30)
Cortlandt Deposit Corp	4,950	7,425	6.62%	2/1/2009	(25)	(35)
Cortlandt Deposit Corp	4,893	7,339	6.51%	1/15/2009	(26)	(35)
Bank of America, N.A.	25,500	—	5.80%	10/1/2017	(4)	(30)
Bear Stearns Commercial	26,250	—	5.88%	8/1/2017	(13)	(38)
Wachovia	26,000	—	5.42%	2/11/2017	(14)	(30)
Bear Stearns Commercial	—	—	7.18%	1/1/2020	(27)	(36)
Bear Stearns Commercial	—	—	7.14%	1/1/2020	(28)	(36)
Interest rate swaps (41)	<u>34,284</u>	<u>16,002</u>	6.18%	(39)		
Total fixed-rate debt	<u>286,341</u>	<u>224,087</u>				
Total fixed and variable debt	<u>401,982</u>	<u>318,260</u>				
Valuation premium on assumption of debt net of amortization (40)	<u>921</u>	<u>1,247</u>				
Total	<u>\$ 402,903</u>	<u>\$ 319,507</u>				



**ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

7. Mortgage Loans, continued

Notes:

- (1) Ledgewood Mall
- (2) Village Commons Shopping Center
- (3) 161st Street
- (4) 216th Street
- (5) Liberty Avenue
- (6) Granville Center
- (7) Fordham Place
- (8) Branch Shopping Center
- (9) Marketplace of Absecon
 - Bloomfield Town Square
 - Hobson West Plaza
 - Village Apartments
 - Town Line Plaza
 - Methuen Shopping Center
 - Abington Towne Center
- (10) Tarrytown Center
- (11) Acadia Strategic Opportunity Fund II, LLC
- (12) Acadia Strategic Opportunity Fund III, LLC
- (13) Merrillville Plaza
- (14) 239 Greenwich Avenue
- (15) New Loudon Center
- (16) Crescent Plaza
- (17) Pacesetter Park Shopping Center
- (18) Elmwood Park Shopping Center
- (19) Gateway Shopping Center
- (20) Clark-Diversey
- (21) Boonton Shopping Center
- (22) Chestnut Hill
- (23) Walnut Hill
- (24) Sherman Avenue
- (25) Kroger Portfolio
- (26) Safeway Portfolio
- (27) Pelham Manor
- (28) Atlantic Avenue Self-Storage
- (29) Monthly principal and interest.
- (30) Interest only monthly.
- (31) Annual principal and monthly interest.
- (32) Interest only monthly until 9/10; monthly principal and interest thereafter.
- (33) Interest only monthly until 12/08; monthly principal and interest thereafter.
- (34) Interest only monthly until 1/10; monthly principal and interest thereafter.
- (35) Annual principal and semi-annual interest payments.
- (36) Interest only upon draw down on construction loan.
- (37) Interest only until 10/11, monthly principal and interest thereafter

- (38) Interest only until 7/12, monthly principal and interest thereafter
- (39) Maturing between 1/1/10 and 3/1/12.
- (40) In connection with the assumption of debt in accordance with the requirements of SFAS No. 141, the Company has recorded a valuation premium which is being amortized to interest expense over the remaining terms of the underlying mortgage loans.
- (41) Represents the amount of the company's variable-rate debt that has been fixed through certain cash flow hedge transactions (Note 18).

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

8. Convertible Notes Payable

In December 2006, the Company issued \$100.0 million of convertible notes with a fixed interest rate of 3.75% due 2026 (the “Convertible Notes”). The Convertible Notes were issued at par and require interest payments semi-annually in arrears on June 15th and December 15th of each year. The Convertible Notes are unsecured unsubordinated obligations and rank equally with all other unsecured and unsubordinated indebtedness. On January 8, 2007, the option to increase the issuance of the Convertible Notes by an additional \$15.0 million, was exercised, resulting in additional proceeds of \$14.7 million. The Convertible Notes had an initial conversion price of \$30.86 per share. Upon conversion of the Convertible Notes, the Company will deliver cash and, in some circumstances, Common Shares, as specified in the indenture relating to the Convertible Notes. The Convertible Notes may only be converted prior to maturity: (i) during any calendar quarter beginning after December 31, 2006 (and only during such calendar quarter), if, and only if, the closing sale price of the Company’s Common Shares for at least 20 trading days (whether consecutive or not) in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter is greater than 130% of the conversion price per common share in effect on the applicable trading day; or (ii) during the five consecutive trading-day period following any five consecutive trading-day period in which the trading price of the notes was less than 98% of the product of the closing sale price of the Company’s Common Shares multiplied by the applicable conversion rate; or (iii) if those notes have been called for redemption, at any time prior to the close of business on the second business day prior to the redemption date; or (iv) if the Company’s Common Shares are not listed on a United States national or regional securities exchange for 30 consecutive trading days. Prior to December 20, 2011, the Company will not have the right to redeem Convertible Notes, except to preserve its status as a REIT. After December 20, 2011, the Company will have the right to redeem the notes, in whole or in part, at any time and from time to time, for cash equal to 100% of the principal amount of the notes plus any accrued and unpaid interest to, but not including, the redemption date. The Holders of notes may require the Company to repurchase their notes, in whole or in part, on December 20, 2011, December 15, 2016, and December 15, 2021 for cash equal to 100% of the principal amount of the notes to be repurchased plus any accrued and unpaid interest to, but not including, the repurchase date.

If certain change of control transactions occur prior to December 20, 2011 and a holder elects to convert the Convertible Notes in connection with any such transaction, the Company will increase the conversion rate in connection with such conversion by a number of additional common shares based on the date such transaction becomes effective and the price paid per common share in such transaction. The conversion rate may also be adjusted under certain other circumstances, including the payment of cash dividends in excess of our current regular quarterly cash dividend of \$0.21 per Common Share, but will be not adjusted for accrued and unpaid interest on the notes.

Upon a conversion of notes, the Company will deliver cash and, at the Company’s election, its Common Shares, with an aggregate value, which the Company refers to as the “conversion value”, equal to the conversion rate multiplied by the average price of the Company’s Common Shares as follows: (i) an amount in cash which the Company refers to as the “principal return”, equal to the lesser of (a) the principal amount of the converted notes and (b) the conversion value; and (ii) if the conversion value is greater than the principal return, an amount with a value equal to the difference between the conversion value and the principal return, which the Company refers to as the “new amount”. The net amount may be paid, at the Company’s option, in cash, its Common Shares or a combination of cash and its Common Shares.

The scheduled principal repayments of all indebtedness as of December 31, 2007 are as follows:

(dollars in thousands)	
2008	\$ 92,199
2009	53,356
2010	11,515
2011	131,870
2012	11,239
Thereafter	216,803
	<u>\$ 516,982⁽¹⁾</u>

Note:

(1) Does not include \$921 net valuation premium on assumption of debt.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

9. Shareholders' Equity and Minority Interests**Common Shares**

Through December 31, 2007, the Company had repurchased 2,051,605 Common Shares at a total cost of \$11.7 million (all of these Common Shares have been subsequently reissued) under its share repurchase program that allows for the repurchase of up to \$20.0 million of its outstanding Common Shares. The repurchased shares are reflected as a reduction of Common Shares at par value and additional paid-in capital.

During the first quarter of 2007, 43,865 employee Restricted Shares were cancelled to pay the employees' income taxes due on the value of the portion of the Restricted Shares which vested. During the year ended December 31, 2007, the Company recognized accrued Common Share and Common OP Unit-based compensation totaling \$3.3 million in connection with the vesting of Restricted Shares and Units. (Note 13).

Minority Interests

The following table summarizes the change in the minority interests since December 31, 2006:

	Minority Interest in Operating Partnership	Minority Interest in partially- owned Affiliates
(dollars in thousands)		
Balance at December 31, 2006	\$ 8,673	\$ 105,064
Distributions declared of \$1.033 per Common OP Unit	(690)	—
Net income for the period January 1 through December 31, 2007	615	14,601
Distributions paid	—	(63,691)
Conversion of Series B Preferred OP Units	(4,000)	—
Other comprehensive income – unrealized loss on valuation of swap agreements	(136)	—
Minority Interest contributions	—	110,542
Employee Long-term Incentive Plan Awards	133	—
Balance at December 31, 2007	<u>\$ 4,595</u>	<u>\$ 166,516</u>

Minority interest in the Operating Partnership represents (i) the limited partners' 642,272 Common OP Units at both December 31, 2007 and 2006, (ii) 188 Series A Preferred OP Units at both December 31, 2007 and 2006, with a stated value of \$1,000 per unit, which are entitled to a preferred quarterly distribution of the greater of (a) \$22.50 (9% annually) per Series A Preferred OP Unit or (b) the quarterly distribution attributable to a Series A Preferred OP Unit if such unit were converted into a Common OP Unit, and (iii) 0 and 4,000 Series B Preferred OP Units at December 31, 2007 and December 31, 2006, respectively, with a stated value of \$1,000 per unit, which are entitled to a preferred quarterly distribution of the greater of (a) \$13.00 (5.2% annually) per unit or (b) the quarterly distribution attributable to a Series B Preferred OP Unit if such unit were converted into a Common OP Unit.

During February 2007, Klaff (Note 10) converted 3,800 Series B Preferred Units into 296,412 Common OP Units and ultimately into the same number of Common Shares. During June 2007 Klaff converted its remaining 200 Series B Preferred Units into 15,601 Common OP Units and ultimately into the same number of Common Shares.

Minority interests in partially-owned affiliates include third-party interests in Fund I, II and III, and Mervyns I and II and three other entities.

During July 2005, the Company issued to a third party 11,105 Restricted Common OP Units valued at \$18.01 per unit in connection with the purchase of 4343 Amboy Road. The holder of the Common OP Units was restricted from selling these for six months from the date of the transaction. During June 2006, the Company redeemed for cash the 11,105 Restricted Common OP Units.

During January 2006, the Company acquired a 60% interest in the A&P Shopping Plaza located in Boonton, New Jersey, (Note 2). The remaining 40% interest is owned by a third party and is reflected as minority interest in the accompanying Consolidated Balance Sheets at December 31, 2007 and December 31, 2006.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

9. Shareholders' Equity and Minority Interests, continued**Minority Interests, continued**

The following table summarizes the minority interest contributions and distributions in 2007:

(dollars in thousands)	<u>Contributions</u>	<u>Distributions</u>
Partially-owned affiliates	\$ —	\$ (2,641)
Fund I	—	(3,658)
Fund II	66,050	(17,628)
Mervyns II	2,139	(39,764)
Fund III	42,353	—
	<u>\$ 110,542</u>	<u>\$ (63,691)</u>

In February 2005, the Company issued \$4.0 million (250,000 Restricted Common OP Units valued at \$16.00 each) of Restricted Common OP Units to Klaff in consideration for the remaining 25% interest in certain management contract rights previously acquired from Klaff as well as the rights to certain potential future revenue streams. This followed the acquisition of 75% of the management contract rights from Klaff in January 2004 as reflected below. The Restricted Common OP Units are convertible into the Company's Common Shares on a one-for-one basis after a five-year lock-up period. \$1.1 million of the purchase price was allocated to investment in management contracts in the consolidated balance sheet and is being amortized over the estimated remaining life of the contracts.

The Series A Preferred OP Units were issued on November 16, 1999 in connection with the acquisition of all the partnership interests of the limited partnership which owns the Pacesetter Park Shopping Center. Through December 31, 2007, 696 Series A Preferred OP Units were converted into 92,800 Common OP Units and then into Common Shares. The Series A Preferred OP Units are currently convertible into Common OP Units based on the stated value divided by \$7.50. Either the Company or the holders can currently call for the conversion of the Series A Preferred OP Units at the lesser of \$7.50 or the market price of the Common Shares as of the conversion date.

4,000 Series B Preferred OP Units were issued to Klaff during January of 2004 in consideration for the acquisition of 75% of certain management contract rights. The Preferred OP Units are convertible into Common OP Units based on the stated value of \$1,000 divided by \$12.82 at any time. Additionally, Klaff may currently redeem them at par for either cash or Common OP Units. After the fifth anniversary of the issuance, the Company may redeem the Preferred OP Units and convert them into Common OP Units at market value as of the redemption date. The \$4.0 million purchase price is reflected in the investment in management contracts in the consolidated balance sheet and is being amortized over the estimated life of the contracts. For the years ended December 31, 2006 and 2005, \$0.5 million of these Klaff management contracts were written off following the disposition of these assets. During 2007, Klaff converted all 4,000 Series B Preferred Units into 312,013 Common OP Units and ultimately into Common Shares.

10. Related Party Transactions

During January 2004, the Operating Partnership issued 4000 Restricted Preferred OP Units to Klaff for certain management contract rights and the rights to certain potential future revenue streams. During 2007, Klaff converted all of these units into 312,013 Common Shares (Note 9).

During February 2005, the Operating Partnership issued \$4.0 million of Restricted Common OP Units to Klaff for the balance of certain management contract rights as well as the rights to certain potential future revenue streams (Note 9).

During March 2005, the Company completed \$20.0 million Preferred Equity Investment with Levitz SL, of which Klaff is the managing member. In June 2006, the Company converted its Preferred Equity Investment with Levitz SL, into a mortgage loan, (Note 4).

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

10. Related Party Transactions, continued

The Company earns asset management, leasing, disposition, development and construction fees for providing services to an existing portfolio of retail properties and/or leasehold interests in which Klaff has an interest. Fees earned by the Company in connection with this portfolio were \$2.1 million, \$3.5 million and \$3.6 million for the years ended December 31, 2007, 2006 and 2005 respectively.

Lee Wielansky, the Lead Trustee of the Company, was paid a consulting fee of \$0.1 million for each of the years ended December 31, 2007, 2006, and 2005.

11. Tenant Leases

Space in the shopping centers and other retail properties is leased to various tenants under operating leases that usually grant tenants renewal options and generally provide for additional rents based on certain operating expenses as well as tenants' sales volume.

Minimum future rentals to be received under non-cancelable leases for shopping centers and other retail properties as of December 31, 2007 are summarized as follows:

(dollars in thousands)

2008	\$ 84,482
2009	81,036
2010	71,734
2011	58,538
2012	49,778
Thereafter	326,286
	<u>\$ 671,854</u>

Minimum future rentals above include a total of \$7.5 million for three tenants, totaling three leases, which have filed for bankruptcy protection. Two tenant's leases have not been rejected nor affirmed. One tenant has filed a notice of rejection dated January 18, 2008. During the years ended December 31, 2007, 2006 and 2005, no single tenant collectively accounted for more than 10% of the Company's total revenues.

12. Lease Obligations

The Company leases land at seven of its shopping centers, which are accounted for as operating leases and generally provide the Company with renewal options. Ground rent expense was \$4.1 million, \$4.5 million, and \$3.5 million (including capitalized ground rent at properties under development of \$2.7 million, \$3.4 million and \$2.7 million) for the years ended December 31, 2007, 2006 and 2005, respectively. The leases terminate at various dates between 2008 and 2066. These leases provide the Company with options to renew for additional terms aggregating from 20 to 60 years. The Company leases space for its White Plains corporate office for a term expiring in 2015. Office rent expense under this lease was \$0.8 million, \$0.6 million and \$0.4 million for the years ended December 31, 2007, 2006 and 2005, respectively. Future minimum rental payments required for leases having remaining non-cancelable lease terms are as follows:

(dollars in thousands)

2008	\$ 3,904
2009	4,656
2010	5,538
2011	5,575
2013	5,642
Thereafter	101,360
	<u>\$ 126,675</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

13. Share Incentive Plan

During 2003, the Company adopted the 2003 Share Incentive Plan (the "2003 Plan"). The 2003 Plan authorizes the issuance of options, share appreciation rights, restricted shares ("Restricted Shares"), restricted OP units ("LTIP Units") and performance units (collectively, "Awards") to officers, employees and trustees of the Company and consultants to the Company equal to up to four percent of the total Common Shares of the Company outstanding from time to time on a fully diluted basis. However, no participant may receive more than the equivalent of 1,000,000 Common Shares during the term of the 2003 Plan with respect to Awards. Options are granted by the Compensation Committee (the "Committee"), which currently consists of two non-employee Trustees, and will not have an exercise price less than 100% of the fair market value of the Common Shares and a term of greater than ten years at the grant date. Vesting of options is at the discretion of the Committee. Share appreciation rights provide for the participant to receive, upon exercise, cash and/or Common Shares, at the discretion of the Committee, equal to the excess of the market value of the Common Shares at the exercise date over the market value of the Common Shares at the grant date. The Committee determines the restrictions placed on Awards, including the dividends or distributions thereon and the term of such restrictions. The Committee also determines the award and vesting of performance units and performance shares based on the attainment of specified performance objectives of the Company within a specified performance period. Through December 31, 2007, no share appreciation rights or performance units/shares had been awarded.

During 2006, the Company adopted the 2006 Share Incentive Plan (the "2006 Plan"). The 2006 Plan is substantially similar to the 2003 Plan, except that the maximum number of Common Shares equivalents that the Company may issue pursuant to the 2006 Plan is 500,000

On January 15, 2007 (the "Grant Date"), the Company issued 108,823 Restricted Common Shares ("Restricted Shares") to officers and 20,735 Restricted Shares to employees of the Company. The Restricted Shares do not carry the rights of Common Shares, including voting rights, until vesting and may not be transferred, assigned or pledged until the recipients have a vested non-forfeitable right to such shares. All Restricted Shares are subject to the recipients' continued employment with the Company through the applicable vesting dates. Vesting with respect to 61,940 of the Restricted Shares issued to officers is over four years with 25% vesting on each of the next four anniversaries of the Grant Date. In addition, vesting on 50% of the Restricted Shares issued to officers is also subject to certain Company performance targets. Vesting with respect to 46,883 of the Restricted Shares issued to officers is over three years with 30% vesting on the first anniversary and 35% vesting on the following two anniversaries of the Grant Date. Vesting with respect to the 20,735 Restricted Shares issued to employees is over four years with 25% vesting on each of the next four anniversaries of the Grant Date. In addition, vesting on 25% of the Restricted Shares issued to employees is also subject to certain total shareholder returns on the Company's Common Shares.

On the Grant Date, the Company also issued 50,000 Restricted Shares to an officer in connection with his promotion to Executive Vice President. Vesting with respect to these Restricted Shares, is over five years with 20% vesting on each of the next five anniversaries of the Grant Date.

Dividends on 46,883 of the Restricted Shares, issued to officers are paid currently on both unvested and vested shares. Dividends on 132,675 of these Restricted Shares will not be paid until such Restricted Shares vest. There will be a cumulative dividend payment upon vesting from the Grant Date to the applicable vesting date.

The total value of the above Restricted Share awards on the date of grant was \$4.5 million. Compensation expense of \$1.1 million has been recognized in the accompanying consolidated financial statements related to these Restricted Shares for the year ended December 31, 2007. The weighted average fair value for shares granted for the years ended December 31, 2007, 2006 and 2005 were \$24.91, \$20.46 and \$16.30, respectively.

On the Grant Date, the Company also issued 20,322 LTIP Units to officers and 1,214 LTIP Units to employees of the Company. LTIP Units are similar to Restricted Shares but provide for a quarterly partnership distribution in a like amount as paid to Common OP Units. This distribution is paid on both unvested and vested LTIP Units. The LTIP Units are convertible into Common OP Units and Common Shares upon vesting and a revaluation of the book capital accounts. Vesting with respect to the LTIP Units is over four years with 25% vesting on each of the next four anniversaries of the Grant Date. In addition, vesting on 50% of the officers LTIP Units and 25% of the employees LTIP Units are also subject to certain Company performance targets.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

13. Share Incentive Plan, continued

The total value of these LTIP Units on the Grant Date was \$0.5 million. Compensation expense of \$0.1 million has been recognized in the accompanying financial statements related to these LTIP Units for the year ended December 31, 2007.

On May 15, 2007, the Company issued 10,831 Common Shares and the equivalent of 5,096 Common Shares through a deferred compensation plan to Trustees of the Company. In addition, on August 23, 2007, the Company issued an additional 1,918 unrestricted Common Shares to a newly elected Trustee. Trustee fee expense of \$0.5 million for the year ended December 31, 2007 has been recognized in the accompanying consolidated financial statements related to these issuances.

As of December 31, 2007, the Company had 473,738 options outstanding to officers and employees of which 454,106 are vested. These options are for ten-year terms from the grant date and vest in three equal annual installments, which began on the Grant Date. In addition, 58,000 options have been issued, of which all are vested, to non-employee Trustees as of December 31, 2007.

For the years ended December 31, 2007, 2006 and 2005, \$3.3 million, \$2.7 million, and \$1.0 million, respectively, were recognized in compensation expense related to Restricted Share and LTIP Unit grants.

The Company has used the Binomial method for purposes of estimating the fair value in determining compensation expense for options granted for the years ended December 31, 2006 and 2005. No options were issued during 2007. The fair value for the options issued by the Company was estimated at the date of the grant using the following weighted-average assumptions resulting in:

	<u>Years ended December 31,</u>	
	<u>2006</u>	<u>2005</u>
Weighted-average volatility	18.0%	18.0%
Expected dividends	3.6%	4.2%
Expected life (in years)	7.5	7.5
Risk-free interest rate	4.4%	4.0%
Fair value at date of grant (per option)	\$3.03	\$2.57

A summary of option activity under all option arrangements as of December 31, 2007, and changes during the year then ended is presented below:

Options	<u>Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Term</u>	<u>Aggregate Intrinsic Value (dollars in thousands)</u>
Outstanding at January 1, 2007	550,372	\$ 10.01		
Granted	—	—		
Exercised	(17,474)	9.94		
Forfeited or Expired	(1,160)	20.65		
Outstanding at December 31, 2007	<u>531,738</u>	<u>\$ 9.99</u>	<u>4.0</u>	<u>\$ 8,305</u>
Exercisable at December 31, 2007	<u>512,106</u>	<u>\$ 9.58</u>	<u>3.9</u>	<u>\$ 8,207</u>

The weighted average Grant Date fair value of options granted during the years 2006 and 2005 was \$3.03 and \$2.57, respectively. The total intrinsic value of options exercised during the years ended December 31, 2007, 2006 and 2005 was \$0.3 million, \$0.1 million and \$0.6 million, respectively.

A summary of the status of the Company's unvested Restricted Shares and LTIP Units as of December 31, 2007 and changes during the year ended December 31, 2007, is presented below:

Unvested Shares and LTIP Units	<u>Restricted Shares (in thousands)</u>	<u>Weighted Grant-Date Fair Value</u>	<u>LTIP Units (in thousands)</u>	<u>Weighted Grant-Date Fair Value</u>
Unvested at January 1, 2007	550	\$ 17.27	—	\$ —
Granted	180	24.91	22	24.91
Vested	(105)	14.89	—	—
Forfeited	(30)	19.41	—	—
Unvested at December 31, 2007	<u>595</u>	<u>\$ 20.51</u>	<u>22</u>	<u>\$ 24.91</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

13. Share Incentive Plan, continued

As of December 31, 2007, there was \$8.5 million of total unrecognized compensation cost related to unvested share-based compensation arrangements granted under share incentive plans. That cost is expected to be recognized over a weighted-average period of 2.3 years. The total fair value of Restricted Shares that vested during the years ended December 31, 2007, 2006 and 2005, was \$1.6 million, \$2.5 million and \$1.0 million, respectively.

14. Employee Share Purchase and Deferred Share Plan

The Acadia Realty Trust Employee Share Purchase Plan (the "Purchase Plan"), allows eligible employees of the Company to purchase Common Shares through payroll deductions. The Purchase Plan provides for employees to purchase Common Shares on a quarterly basis at a 15% discount to the closing price of the Company's Common Shares on either the first day or the last day of the quarter, whichever is lower. The amount of the payroll deductions will not exceed a percentage of the participant's annual compensation that the Committee establishes from time to time, and a participant may not purchase more than 1,000 Common Shares per quarter. Compensation expense will be recognized by the Company to the extent of the above discount to the average closing price of the Common Shares with respect to the applicable quarter. During 2007, 2006 and 2005, 7,123, 5,307 and 6,412 Common Shares, respectively, were purchased by Employees under the Purchase Plan. Associated compensation expense of \$0.03 million was recorded in 2007 and \$0.02 million was recorded in 2006 and 2005.

During August of 2004, the Company adopted a Deferral and Distribution Election pursuant to the 1999 Share Incentive Plan and 2003 Share Incentive Plan, whereby the participants elected to defer receipt of 190,487 Common Shares ("Share Units") that would otherwise would have been issued upon the exercise of certain options. The payment of the option exercise price was made by tendering Common Shares that the participants owned for at least six months prior to the option exercise date. The Share Units are equivalent to a Common Share on a one-for-one basis and carry a dividend equivalent right equal to the dividend rate for the Company's Common shares. The deferral period is determined by each of the participants and generally terminates after the cessation of the participants continuous service with the Company, as defined in the agreement. In December 2004, optionees exercised 346,000 options pursuant to the Deferred Share Election and tendered 155,513 Common Shares in consideration of the option exercise price. In 2004 the Company issued 155,513 Common Shares to optionees and 190,487 Share Units. During 2007, 2006 and 2005 there were no additional Share Units contributed to the plan.

15. Employee 401(k) Plan

The Company maintains a 401(k) plan for employees under which the Company currently matches 50% of a plan participant's contribution up to 6% of the employee's annual salary. A plan participant may contribute up to a maximum of 15% of their compensation but not in excess of \$15,500 for the year ended December 31, 2007. The Company contributed \$0.2 million, \$0.2 million and \$0.1 million for the years ended December 31, 2007, 2006 and 2005, respectively.

16. Dividends and Distributions Payable

On December 6, 2007, the Company declared a cash dividend for the quarter ended December 31, 2007 of \$0.21 per Common Share. The dividend was paid on January 15, 2008 to shareholders of record as of December 31, 2007. In addition, on December 21, 2007, the Company announced the successful completion of its 2007 disposition initiatives. In connection with the taxable gains arising from these and earlier property dispositions, the Company's Board of Trustees approved a special dividend totaling \$7.4 million, or \$0.2225 per Common Share, which was paid on January 15, 2008 to the shareholders of record as of December 31, 2007.

17. Federal Income Taxes

The Company has elected to qualify as a REIT in accordance with the Internal Revenue Code (the "Code") and intends at all times to qualify as a REIT under Sections 856 through 860 of the Code of 1986, as amended. To qualify as a REIT, the Company must meet a number of organizational and operational requirements, including a requirement that it currently distribute at least 90% of its annual REIT taxable income to its shareholders. As a REIT, the Company generally will not be subject to corporate Federal income tax, provided that distributions to its shareholders equal at least the amount of its REIT taxable income as defined under the Code. As the Company distributed sufficient taxable income for the years ended December 31, 2007, 2006 and 2005, no U.S. Federal income or excise taxes were incurred. If the Company fails to qualify as a REIT in any taxable year, it will be subject to Federal income taxes at the regular corporate rates (including any applicable alternative minimum tax) and may not be able to qualify as a REIT for the four subsequent taxable years. Even though the Company qualifies for taxation as a REIT, the Company is subject to certain state and local taxes on its income and property and Federal income and excise taxes on any undistributed taxable income. In addition, taxable income from non-REIT activities managed through the Company's TRS are subject to Federal, state and local income taxes.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

17. Federal Income Taxes, continued

The primary difference between the GAAP and tax reported amounts of the Company's assets and liabilities are a higher GAAP basis in its real estate properties. This is primarily the result of assets acquired as a result of property contributions in exchange for OP Units and the utilization of Code Section 1031 deferred exchanges.

Reconciliation between GAAP net income and Federal taxable income

The following unaudited table reconciles GAAP net income to taxable income for the years ended December 31, 2007, 2006 and 2005:

(dollars in thousands)	2007 (Estimated)	2006 (Actual)	2005 (Actual)
Net income	\$ 27,270	\$ 39,013	\$ 20,626
Net income attributable to TRS	2,514	405	1,349
Net income attributable to REIT	24,756	38,608	19,277
Book/tax difference in depreciation and amortization	4,155	4,906	2,817
Book/tax difference on exercise of stock options and vesting of restricted shares	(689)	(397)	(405)
Book/tax difference on capital transactions (1)	8,300	(16,709)	(465)
Other book/tax differences, net	494	2,963	(2,065)
REIT taxable income before dividends paid deduction	<u>\$ 37,016</u>	<u>\$ 29,371</u>	<u>\$ 19,159</u>

Notes:

- (1) Principally the result of the deferral of the gain from the sale of properties for income tax purposes.

Characterization of Distributions:

The Company has determined that the cash distributed to the shareholders is characterized as follows for Federal income tax purposes:

	For the years ended December 31,		
	2007	2006	2005
Ordinary income	51%	100%	95%
Capital gain	49%	—	3%
Return of capital	—	—	2%
	<u>100%</u>	<u>100%</u>	<u>100%</u>

Taxable REIT Subsidiaries ("TRS")

Income taxes have been provided for using the asset and liability method as required by SFAS No. 109. The Company's combined TRS income (loss) and provision (benefit) for income taxes for the years ended December 31, 2007, 2006 and 2005 are summarized as follows:

(dollars in thousands)	2007 (Estimated)	2006 (Actual)	2005 (Actual)
TRS income (loss) before income taxes	\$ 5,077	\$ (296)	\$ 3,458
Provision (benefit) for income taxes:			
Federal	2,097	(590)	1,601
State and local	466	(111)	508
TRS net income	<u>\$ 2,514</u>	<u>\$ 405</u>	<u>\$ 1,349</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

17. Federal Income Taxes, continued**Characterization of Distributions, continued**

The income tax provision (benefit) differs from the amount computed by applying the statutory federal income tax rate to taxable income (loss) before income taxes as follows:

(dollars in thousands)	2007	2006	2005
Federal provision (benefit) at statutory tax rate	\$ 1,726	(100)	\$ 1,210
State and local taxes, net of federal benefit	255	(15)	330
Tax effect of:			
Valuation allowance against deferred tax liability asset	—	—	208
Utilization of loss and deduction carry forwards	—	—	(115)
Change in estimate	605	(586)	—
REIT state, local and franchise taxes	67	193	507
Total provision (benefit) for income taxes	<u>\$ 2,653</u>	<u>\$ (508)</u>	<u>\$ 2,140</u>

18. Financial Instruments**Fair Value of Financial Instruments:**

SFAS No. 107, "Disclosures about Fair Value of Financial Instruments" requires disclosure on the fair value of financial instruments. Certain of the Company's assets and liabilities are considered financial instruments. Fair value estimates, methods and assumptions are set forth below.

Cash and Cash Equivalents, Restricted Cash, Cash in Escrow, Rents Receivable, Prepaid Expenses, Other Assets, Accounts Payable and Accrued Expenses, Dividends and Distributions Payable, Due to Related Parties and Other Liabilities. The carrying amount of these assets and liabilities approximates fair value due to the short-term nature of such accounts.

Notes Receivable — as of December 31, 2007 and 2006, the Company had notes receivable of \$57.7 million and \$36.0 million, respectively. Given the short-term nature of the notes and the fact that several of the notes are demand notes, the Company has determined that the carrying value of the notes receivable approximates fair value.

Derivative Instruments — the fair value of these instruments is based upon the estimated amounts the Company would receive or pay to terminate the contracts as of December 31, 2007 and 2006 and is determined using interest rate market pricing models.

Mortgage Notes Payable and Notes Payable — As of December 31, 2007 and 2006, the Company has determined the estimated fair value of its mortgage notes payable, including those relating to discontinued operations, were \$519.4 million and \$439.1 million, respectively, by discounting future cash payments utilizing a discount rate equivalent to the rate at which similar mortgage notes payable would be originated under conditions then existing.

Derivative Financial Instruments:

SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", as amended and interpreted, establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. As required by SFAS 133, the Company records all derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative and the resulting designation. Derivatives used to hedge the exposure to changes in the fair value of an asset, liability, or firm commitment attributable to a particular risk, such as interest rate risk, are considered fair value hedges. Derivatives used to hedge the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges.

For derivatives designated as fair value hedges, changes in the fair value of the derivative and the hedged item related to the hedged risk are recognized in earnings. For derivatives designated as cash flow hedges, the effective portion of changes in the fair value of the derivative is initially reported in other comprehensive income (outside of earnings) and subsequently reclassified to earnings when the hedged transaction affects earnings, and the ineffective portion of changes in the fair value of the derivative is recognized directly in earnings. The Company assesses the effectiveness of each hedging relationship by comparing the changes in fair value or cash flows of the derivative hedging instrument with the changes in fair value or cash flows of the designated hedged item or transaction. For derivatives not designated as hedges, changes in fair value are recognized in earnings.

As of December 31, 2007 and 2006, no derivatives were designated as fair value hedges or hedges of net investments in foreign operations. Additionally, the Company does not use derivatives for trading or speculative purposes and currently does not have any derivatives that are not designated as hedges.

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

18. Financial Instruments, continued

Derivative Financial Instruments, continued

The following table summarizes the notional values and fair values of the Company's derivative financial instruments as of December 31, 2007. The notional value does not represent exposure to credit, interest rate or market risks:

Hedge Type	Notional Value	Rate	Maturity	Fair Value
(dollars in thousands)				
Interest rate swaps				
LIBOR Swap	\$ 4,640	4.71%	01/01/10	\$ (93)
LIBOR Swap	11,410	4.90%	10/01/11	(395)
LIBOR Swap	8,434	5.14%	03/01/12	(383)
LIBOR Swap	9,800	4.47%	10/29/10	(195)
Interest rate swaps	<u>\$ 34,284</u>			(1,066)
Interest rate LIBOR Cap	<u>\$ 30,000</u>	6.0%	04/01/08	<u>(28)</u>
Net Derivative instrument liability				<u>\$ (1,094)</u>

The above derivative instruments have been designated as cash flow hedges and hedge the future cash outflows on mortgage debt. Such instruments are reported at the fair values reflected above. As of December 31, 2007 and 2006, unrealized losses totaling \$1.1 and \$0.2 million, respectively were reflected in accumulated other comprehensive loss.

19. Earnings Per Common Share

Basic earnings per share was determined by dividing the applicable net income to common shareholders for the year by the weighted average number of Common Shares outstanding during each year consistent with SFAS No. 128. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue Common Shares were exercised or converted into Common Shares or resulted in the issuance of Common Shares that then shared in the earnings of the Company. The following table sets forth the computation of basic and diluted earnings per share from continuing operations for the periods indicated:

	Years ended December 31,		
	2007	2006	2005
(dollars in thousands, except per share amounts)			
Numerator:			
Income from continuing operations – basic earnings per share	\$ 18,056	\$ 15,622	\$ 19,320
Effect of dilutive securities:			
Preferred OP Unit distributions	23	254	—
Numerator for diluted earnings per share	<u>18,079</u>	<u>15,876</u>	<u>19,320</u>
Denominator:			
Weighted average shares – basic earnings per share	32,907	32,502	31,949
Effect of dilutive securities:			
Employee share options	335	314	265
Convertible Preferred OP Units	67	337	—
Dilutive potential Common Shares	402	651	265
Denominator for diluted earnings per share	<u>33,309</u>	<u>33,153</u>	<u>32,214</u>
Basic earnings per share from continuing operations	<u>\$ 0.55</u>	<u>\$ 0.48</u>	<u>\$ 0.61</u>
Diluted earnings per share from continuing operations	<u>\$ 0.54</u>	<u>\$ 0.48</u>	<u>\$ 0.60</u>

ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

19. Earnings Per Common Share, continued

The weighted average shares used in the computation of basic earnings per share include unvested restricted shares (Note 13) and Share Units (Note 14) that are entitled to receive dividend equivalent payments. The effect of the conversion of Common OP Units is not reflected in the above table, as they are exchangeable for Common Shares on a one-for-one basis. The income allocable to such units is allocated on this same basis and reflected as minority interest in the accompanying consolidated financial statements. As such, the assumed conversion of these units would have no net impact on the determination of diluted earnings per share. The conversion of the convertible notes payable (Note 8) is not reflected in the table above as such conversion would be anti-dilutive.

20. Summary of Quarterly Financial Information (unaudited)

The quarterly results of operations of the Company for the years ended December 31, 2007 and 2006 are as follows:

(dollars in thousands, except per share amounts)	March 31, 2007	June 30, 2007	September 30, 2007	December 31, 2007
Revenue	\$ 24,989	\$ 23,481	\$ 26,282	\$ 26,817
Income from continuing operations	\$ 3,670	\$ 3,028	\$ 8,117	\$ 3,241
Income (loss) from discontinued operations	\$ 166	\$ 6	\$ (421)	\$ 5,786
Income from extraordinary item	\$ 2,883	\$ $\frac{3}{4}$	\$ 794	\$ $\frac{3}{4}$
Net income	\$ 6,719	\$ 3,034	\$ 8,490	\$ 9,027
Net income per Common Share — basic:				
Income from continuing operations	\$ 0.11	\$ 0.09	\$ 0.25	\$ 0.10
Income (loss) from discontinued operations	0.01	$\frac{3}{4}$	(0.01)	0.17
Income from extraordinary item	0.09	$\frac{3}{4}$	0.02	$\frac{3}{4}$
Net income	<u>\$ 0.21</u>	<u>\$ 0.09</u>	<u>\$ 0.26</u>	<u>\$ 0.27</u>
Net income per Common Share — diluted:				
Income from continuing operations	\$ 0.11	\$ 0.09	\$ 0.24	\$ 0.10
Income (loss) from discontinued operations	0.01	$\frac{3}{4}$	(0.01)	0.17
Income from extraordinary item	0.08	$\frac{3}{4}$	0.02	$\frac{3}{4}$
Net income	<u>\$ 0.20</u>	<u>\$ 0.09</u>	<u>\$ 0.25</u>	<u>\$ 0.27</u>
Cash dividends declared per Common Share	\$ 0.20	\$ 0.20	\$ 0.20	\$ 0.4325
Weighted average Common Shares outstanding:				
Basic	32,753,337	32,934,843	32,965,619	32,972,503
Diluted	33,274,066	33,290,845	33,315,524	33,327,965

(dollars in thousands, except per share amounts)	March 31, 2006	June 30, 2006	September 30, 2006	December 31, 2006
Revenue	\$ 23,906	\$ 22,303	\$ 24,260	\$ 25,331
Income from continuing operations	\$ 3,667	\$ 4,366	\$ 3,722	\$ 3,867
Income from discontinued operations	\$ 686	\$ 482	\$ 400	\$ 21,823
Net income	\$ 4,353	\$ 4,848	\$ 4,122	\$ 25,690
Net income per Common Share — basic:				
Income from continuing operations	\$ 0.11	\$ 0.13	\$ 0.12	\$ 0.12
Income from discontinued operations	0.02	0.02	0.01	0.67
Net income	<u>\$ 0.13</u>	<u>\$ 0.15</u>	<u>\$ 0.13</u>	<u>\$ 0.79</u>
Net income per Common Share — diluted:				
Income from continuing operations	\$ 0.11	\$ 0.13	\$ 0.12	\$ 0.12
Income from discontinued operations	0.02	0.01	0.01	0.66
Net income	<u>\$ 0.13</u>	<u>\$ 0.14</u>	<u>\$ 0.13</u>	<u>\$ 0.78</u>
Cash dividends declared per Common Share	\$ 0.185	\$ 0.185	\$ 0.185	\$ 0.20
Weighted average Common Shares outstanding:				
Basic	32,468,204	32,509,360	32,513,398	32,514,803
Diluted	32,766,119	32,810,794	32,836,473	33,186,718

**ACADIA REALTY TRUST AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

21. Commitments and Contingencies

Under various Federal, state and local laws, ordinances and regulations relating to the protection of the environment, a current or previous owner or operator of real estate may be liable for the cost of removal or remediation of certain hazardous or toxic substances disposed, stored, generated, released, manufactured or discharged from, on, at, under, or in a property. As such, the Company may be potentially liable for costs associated with any potential environmental remediation at any of its formerly or currently owned properties.

The Company conducts Phase I environmental reviews with respect to properties it acquires. These reviews include an investigation for the presence of asbestos, underground storage tanks and polychlorinated biphenyls (PCBs). Although such reviews are intended to evaluate the environmental condition of the subject property as well as surrounding properties, there can be no assurance that the review conducted by the Company will be adequate to identify environmental or other problems that may exist. Where a Phase II assessment is so recommended, a Phase II assessment is conducted to further determine the extent of possible environmental contamination. In all instances where a Phase I or II assessment has resulted in specific recommendations for remedial actions, the Company has either taken or scheduled the recommended remedial action. To mitigate unknown risks, the Company has obtained environmental insurance for most of its properties, which covers only unknown environmental risks.

The Company believes that it is in compliance in all material respects with all Federal, state and local ordinances and regulations regarding hazardous or toxic substances. Management is not aware of any environmental liability that it believes would have a material adverse impact on the Company's financial position or results of operations. Management is unaware of any instances in which the Company would incur significant environmental costs if any or all properties were sold, disposed of or abandoned. However, there can be no assurance that any such non-compliance, liability, claim or expenditure will not arise in the future.

The Company is involved in various matters of litigation arising in the normal course of business. While the Company is unable to predict with certainty the amounts involved, the Company's management and counsel are of the opinion that, when such litigation is resolved, the Company's resulting liability, if any, will not have a significant effect on the Company's consolidated financial position or results of operations.

22. Subsequent Events

On February 11, 2008, the Company entered into contract to sell the Ledgewood Mall for \$55 million. Ledgewood Mall is a 517,000 square foot enclosed mall in Ledgewood, New Jersey. The Company expects to close on this transaction in the second quarter of 2008.

During the fiscal year ending December 31, 2008, the investment consortium which owns Mervyns (Note 4), sold 41 Mervyns Store locations. The Operating Partnership's share of the gain amounted to approximately \$1.9 million, net of taxes.

During December 2007, the Company, through Fund III, and in conjunction with its current self-storage partner, Storage Post, entered into an agreement to acquire a portfolio of ten self-storage properties from Storage Post's existing institutional investors for approximately \$160 million. During January 2008, the Company, through Fund III, entered into an agreement to acquire an additional Storage Post self-storage project currently under construction for approximately \$11 million. These transactions are expected to close in the first quarter of 2008.

ACADIA REALTY TRUST
SCHEDULE III-REAL ESTATE AND ACCUMULATED DEPRECIATION

December 31, 2007

Description	Encumbrances	Land	Buildings & Improvements	Costs Capitalized Subsequent to Acquisition	Land	Buildings & Improvements	Total	Accumulated Depreciation	Date of Acquisition (a) Construction (c)
Shopping Centers									
Crescent Plaza Brockton, MA	\$ 17,600	\$ 1,147	\$ 7,425	\$ 1,099	\$ 1,147	\$ 8,524	\$ 9,671	\$ 4,898	1984(a)
New Loudon Center Latham, NY	14,752	505	4,161	10,839	505	15,000	15,505	9,170	1982(a)
Ledgewood Mall Ledgewood, NJ	—	619	5,434	33,200	619	38,634	39,253	28,450	1983(a)
Mark Plaza Edwardsville, PA	—	—	4,268	4,690	—	8,958	8,958	6,177	1968(c)
Blackman Plaza Wilkes-Barre, PA	—	120	—	1,599	120	1,599	1,719	687	1968(c)
Plaza 422 Lebanon, PA	—	190	3,004	730	190	3,734	3,924	2,938	1972(c)
Route 6 Mall Honesdale, PA	—	—	—	12,695	1,664	11,031	12,695	4,964	1995(c)
Bartow Avenue Bronx, NY	—	1,691	5,803	481	1,691	6,284	7,975	637	2002(c)
Amboy Rd. Shopping Ctr. Staten Island, NY	—	—	11,909	1,496	—	13,405	13,405	830	2005(a)
Abington Towne Center Abington, PA	—	799	3,197	1,994	799	5,191	5,990	1,646	1998(a)
Bloomfield Town Square Bloomfield Hills, MI	—	3,443	13,774	8,960	3,443	22,734	26,177	5,173	1998(a)
Walnut Hill Plaza Woonsocket, RI	23,500	3,122	12,488	1,523	3,122	14,011	17,133	3,718	1998(a)
Elmwood Park Plaza Elmwood Park, NJ	34,600	3,248	12,992	14,764	3,798	27,206	31,004	7,549	1998(a)
Merrillville Plaza Hobart, IN	26,250	4,288	17,152	1,516	4,288	18,668	22,956	4,838	1998(a)
Marketplace of Absecon Absecon, NJ	—	2,573	10,294	2,479	2,577	12,769	15,346	3,220	1998(a)
Clark Diversey Boonton	3,727	11,303	2,903	(1,372)	10,061	2,773	12,834	139	2006(a)
Chestnut Hill Third Avenue	8,451	3,297	7,611	(2,392)	1,328	7,188	8,516	344	2006(a)
Liberty Avenue Tarrytown Centre	9,834	8,978	5,568	(515)	8,289	5,742	14,031	214	2006(a)
Acadia Realty L.P. Pelham Manor	—	11,108	8,038	894	11,855	8,185	20,040	256	2006(a)
Hobson West Plaza Naperville, IL	9,990	—	12,627	—	—	12,627	12,627	316	2005(a)
Village Commons/ Smithtown Shopping Center Smithtown, NY	9,800	2,323	7,396	224	2,323	7,620	9,943	651	2004(a)
Town Line Plaza Rocky Hill, CT	—	—	1,455	153	—	1,608	1,608	1,348	—
Branch Shopping Center Village of the Branch, NY	—	905	—	—	905	—	905	—	2004(a)
	—	1,793	7,172	718	1,793	7,890	9,683	2,136	1998(a)
	9,781	3,229	12,917	1,866	3,229	14,783	18,012	4,143	1998(a)
	—	878	3,510	7,257	907	10,738	11,645	6,849	1998(a)
	15,773	3,156	12,545	777	3,156	13,322	16,478	3,273	1998(a)

ACADIA REALTY TRUST
SCHEDULE III-REAL ESTATE AND ACCUMULATED DEPRECIATION

December 31, 2007

Description	Encumbrances	Land	Buildings & Improvements	Costs Capitalized Subsequent to Acquisition	Land	Buildings & Improvements	Total	Accumulated Depreciation	Date of Acquisition (a) Construction (c)
The Methuen Shopping Center Methuen, MA	—	956	3,826	594	961	4,415	5,376	—	1998(a)
Gateway Shopping Center Burlington, VT	20,500	1,273	5,091	11,536	1,273	16,627	17,900	3,101	1999(a)
Mad River Station Dayton, OH	—	2,350	9,404	591	2,350	9,995	12,345	2,329	1999(a)
Pacesetter Park Shopping Center Ramapo, NY	12,500	1,475	5,899	1,108	1,475	7,007	8,482	1,791	1999(a)
239 Greenwich Greenwich, CT	26,000	1,817	15,846	502	1,817	16,348	18,165	3,590	1999(c)
Residential Property Winston Salem, NC	—	3,429	13,716	3,237	3,429	16,953	20,382	4,989	1998(a)
Granville Center	2,818	2,186	8,744	59	2,186	8,803	10,989	1,206	2002(a)
Kroger/Safeway Various	9,843	—	48,988	(48)	—	48,940	48,940	28,127	2003(a)
400 E. Fordham Road Bronx, NY	37,263	11,144	18,010	2,240	13,351	18,043	31,394	1,018	2004(a)
4650 Broadway/Sherman Avenue New York, NY	19,000	25,267	—	—	25,267	—	25,267	—	2005(a)
216th Street New York, NY	25,500	7,313	—	19,286	7,261	19,338	26,599	146	2005(a)
161st Street Bronx, NY	30,000	16,679	28,410	261	16,679	28,671	45,350	1,731	2005(a)
Oakbrook Oakbrook, IL	—	—	6,906	17	—	6,923	6,923	1,268	2005(a)
West Shore Expressway West 54th Street	—	3,380	13,554	—	3,380	13,554	16,934	265	2007(a)
Atlantic Avenue	—	16,699	18,704	—	16,699	18,704	35,403	340	2007(a)
Canarsie Plaza	—	5,322	—	—	5,322	—	5,322	—	2007(a)
125 Main Street Assoc.	—	32,656	—	—	32,656	—	32,656	—	2007(a)
Sheepshead Bay	—	12,994	4,316	—	12,994	4,316	17,310	19	2007(a)
ASOF II, LLC	—	20,391	—	—	20,391	—	20,391	—	2007(a)
Underdeveloped land	34,500	—	1,899	—	—	1,899	1,899	24	—
Properties under development	—	250	—	—	250	—	250	—	—
				77,764	—	77,764	77,764	—	—
	<u>\$ 401,982</u>	<u>\$ 234,296</u>	<u>\$ 396,956</u>	<u>\$ 222,822</u>	<u>\$ 235,550</u>	<u>\$ 618,524</u>	<u>\$ 854,074</u>	<u>\$ 155,480</u>	

**ACADIA REALTY TRUST
NOTES TO SCHEDULE III**

December 31, 2007

1. Depreciation and investments in buildings and improvements reflected in the statements of income is calculated over the estimated useful life of the assets as follows:

Buildings: 30 to 40 years

Improvements: Shorter of lease term or useful life

2. The aggregate gross cost of property included above for Federal income tax purposes was \$407.4 million as of December 31, 2007

3. (a) Reconciliation of Real Estate Properties:

The following table reconciles the real estate properties from January 1, 2005 to December 31, 2007:

(dollars in thousands)	For the year ended December 31,		
	2007	2006	2005
Balance at beginning of year	\$ 650,051	\$ 670,817	\$ 561,370
Transfers (1)	—	(131,341)	—
Other improvements	76,007	40,800	11,599
Reclassification of tenant improvement activities	—	—	—
Property Acquired	128,016	69,775	97,848
Balance at end of year	<u>\$ 854,074</u>	<u>\$ 650,051</u>	<u>\$ 670,817</u>

Notes:

(1) Reflects the change in accounting for the Brandywine Portfolio following the recapitalization of the investment in January 2006 (Note 1).

3. (b) Reconciliation of Accumulated Depreciation:

The following table reconciles accumulated depreciation from January 1, 2005 to December 31, 2007:

(dollars in thousands)	For the year ended December 31,		
	2007	2006	2005
Balance at beginning of year	\$ 135,085	\$ 122,077	\$ 102,315
Reclassification of tenant improvement activities	—	—	—
Depreciation related to real estate	20,395	13,008	19,762
Balance at end of year	<u>\$ 155,480</u>	<u>\$ 135,085</u>	<u>\$ 122,077</u>

**ACQUISITION AND PROJECT LOAN
AGREEMENT**

among

**ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
as Lead Borrower**

and

**ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
FORDHAM PLACE OFFICE, LLC
a Delaware limited liability company
as Borrower,**

and

**The LENDERS Party Hereto,
as Lenders**

and

**EUROHYPO AG, NEW YORK BRANCH
as Administrative Agent**

Date: As of October 5, 2007

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ACQUISITION AND PROJECT LOAN AGREEMENT

ACQUISITION AND PROJECT LOAN AGREEMENT is entered into as of October 5, 2007 among ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("**Lead Borrower**"), FORDHAM PLACE OFFICE, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("**Fordham Office**", hereinafter, jointly and severally with Lead Borrower, and singly and collectively, "**Borrower**"); each of the lenders that is a signatory hereto identified under the caption "**LENDERS**" on the signature pages hereof and each lender that becomes a "Lender" after the date hereof pursuant to Section 12.23(1) (individually, a "**Lender**" and, collectively, the "**Lenders**"); and EUROHYPO AG, NEW YORK BRANCH, as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "**Administrative Agent**").

RECITALS

A. Lead Borrower is the fee owner of that certain tract of land located in the County of Bronx, State of New York and being more fully described in Exhibit A attached hereto (the "**Land**") and the improvements currently located thereon.

B. Borrower proposes to renovate, alter, improve, install and construct the Improvements (as hereinafter defined) on the Land and, in connection therewith has requested and applied to the Lenders for a loan in the amount of \$75,339,243.00 (the "**Total Building Loan Commitment**") for the purposes of paying certain of the Cost of Improvement pertaining to the Project (as hereinafter defined) including certain costs with respect to the construction and equipping of the Improvements. The Lenders have agreed to make such loan pursuant to the Building Loan Agreement, of even date herewith, entered into by Borrower, the Lenders and Administrative Agent (as the same may be modified, amended and/or supplemented and in effect from time to time, the "**Building Loan Agreement**")

C. Borrower has also requested and applied to the Lenders for a loan in the amount of \$1,930,757.00 (the "**Total Project Loan Commitment**") for the purpose of paying certain costs pertaining to the Project, which costs do not constitute a Cost of Improvement. The Lenders are willing to make such loan on and subject to the terms and conditions hereinafter set forth.

D. Borrower has also requested and applied to the Lenders for a loan in the amount of \$18,000,000.00 (the "**Total Acquisition Loan Commitment**") for the purpose of re-financing Borrower's acquisition of the Land and the improvements located thereon. The Lenders are willing to make such loan on and subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. As used herein, the following terms have the meanings indicated:

(1) “**Access Laws**” has the meaning assigned to such term in Section 9.17(1).

(2) “**Acquisition Loan**” and “**Acquisition Loans**” have the respective meanings assigned in Section 2.1(1)(b).

(3) “**Acquisition Loan Commitment**” means, as to each Lender, the obligation of such Lender to make Acquisition Loans in a principal amount up to but not exceeding the amount set opposite the name of such Lender on Schedule 1 under the caption “Acquisition Loan Commitment” or, in the case of a Person that becomes a Lender pursuant to an assignment permitted under Section 12.23(1), as specified in the respective instrument of assignment pursuant to which such assignment is effected.

(4) “**Acquisition Loan Mortgage**” shall mean the Acquisition Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing in the amount of the Total Acquisition Loan Commitment and executed, dated and delivered by Borrower to Administrative Agent (on behalf of the Lenders) on the Closing Date, securing the Acquisition Loan Notes, as the same may be modified, amended and/or supplemented and in effect from time to time.

(5) “**Acquisition Loan Notes**” shall mean, collectively, the promissory note given to each of the Lenders, each note in principal amount equal to such Lender’s Acquisition Loan Commitment and substantially in the form of Exhibit C-3 attached hereto, to be executed, dated and delivered by Borrower to each of the Lenders as of the Closing Date, secured by the Acquisition Loan Mortgage, as the same may be modified, amended and/or supplemented and in effect from time to time.

(6) “**Additional Interest**” means any and all amounts which may become due and payable by Borrower in accordance with the terms and provisions of any Hedge Agreement provided by a Eurohypo Counterparty which is secured by the Mortgages in accordance with Section 9.15, which amounts shall be evidenced by and payable pursuant to the Notes in favor of Eurohypo and/or such Affiliate; provided, however, that Additional Interest shall not include any amounts which may become due and payable pursuant to any Hedge Agreement which is not secured by the Mortgages.

(7) “**Adjusted Libor Rate**” means, for any Interest Period for any LIBOR-based Loan, a rate per annum (rounded upwards, if necessary, to the nearest 1/32 of 1%) determined by Administrative Agent to be equal to (a) the Libor Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

(8) “**Administrative Agent**” has the meaning assigned to such term in the Preamble.

(9) “**Advance Date**” has the meaning assigned to such term in Section 2.6(5).

(10) “**Advanced Amount**” has the meaning assigned to such term in Section 14.12(2).

(11) “**Affiliate**” means with respect to any Person, another Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, spouse, children and siblings) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is controlled by any such member or trust. As used in this definition, “**control**” (including, with its correlative meanings, “**controlled by**” and “**under common control with**”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), provided that, in any event, any Person that owns directly or indirectly securities having 10% or more of the voting power for the election of directors or other governing body of a corporation or 10% or more of the partnership, membership or other ownership interests of any other Person (other than as a limited partner of such other Person) will be deemed to control such corporation or other Person. Notwithstanding the foregoing, no individual shall be an Affiliate of a Person solely by reason of his or her being a director, officer, trustee or employee of such Person or one of its Affiliates.

(12) “**Agency Fee**” means the agency fee agreed to by Borrower and Administrative Agent pursuant to the Fee Letter.

(13) “**Agreement**” means this Acquisition and Project Loan Agreement, as the same may be modified, amended and/or supplemented and in effect from time to time.

(14) “**Annual Budget**” has the meaning assigned to such term in Section 9.23(1).

(15) “**Applicable Law**” means any statute, law (including Environmental Laws), regulation, ordinance, rule, judgment, rule of common law, order, decree, Government Approval, approval, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereinafter in effect and, in each case, as amended (including any thereof pertaining to land use, zoning and building ordinances and codes).

(16) “**Applicable Lending Office**” means, for each Lender and for each Type of Loan, the “Lending Office” of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan on the respective signature pages hereof or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to Administrative Agent and Borrower as the office by which its Loans of such Type are to be made and maintained.

(17) “**Applicable Margin**” shall mean, for LIBOR-based Loans, 1.75% per annum.

(18) “**Appraisal**” means an appraisal of the Project prepared by an MAI appraiser satisfactory to Administrative Agent, which appraisal must also (a) satisfy the requirements of Title XI of the Federal Institution Reform, Recovery and Enforcement Act of 1989 and the regulations promulgated thereunder (including the appraiser with respect thereto) and (b) be otherwise in form and substance satisfactory to Administrative Agent.

(19) “**Appraised Value**” means that certain appraised value of the Project as determined by the Appraisal.

(20) “**Approved Annual Budget**” shall have the meaning assigned in Section 9.23(1).

(21) “**Approved Fund**” shall mean any Person (other than a natural person), including, without limitation, any collateralized debt obligation, that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, (c) an entity or an Affiliate of an entity that administers or manages a Lender, or (d) an Eligible Assignee.

(22) “**Approved Lease**” means (a) each lease with each Existing Tenant and (b) each lease entered into after the Closing Date in accordance with the terms and conditions contained in Section 6.2 as such leases and related documents may be modified or amended pursuant to the terms of this Agreement.

(23) “**Approved Mezzanine Lender**” means Eurohypo or its subsidiary.

(24) “**Approved Mezzanine Loan**” means a loan (i) from the Approved Mezzanine Lender to the Mezzanine Borrower and secured solely by a pledge of the direct or indirect ownership interests in the Borrower, (ii) which is evidenced and secured by the Approved Mezzanine Loan Documents, (iii) which has a term expiring on or after the Maturity Date, and (iv) which is the subject of an intercreditor agreement between Administrative Agent and Approved Mezzanine Lender, which shall be in form and content acceptable to Administrative Agent.

(25) “**Approved Mezzanine Loan Documents**” means the documents which will evidence or secure the Approved Mezzanine Loan which shall be subject to the approval of Administrative Agent.

(26) “**Approved Mezzanine Loan Liens**” means liens in favor of Approved Mezzanine Lender created pursuant to the Approved Mezzanine Loan Documents as security for the Approved Mezzanine Loan and approved by Administrative Agent pursuant to the terms of the subordination and intercreditor agreement to be entered into between Administrative Agent and Approved Mezzanine Lender.

(27) “**Assignment and Assumption**” means an Assignment and Assumption duly executed by the parties thereto, in substantially the form of Exhibit D hereto and consented to by Administrative Agent in accordance with Section 12.23(1).

(28) “**Authorized Officer**” means with respect to Borrower, the President or Senior Vice President of Borrower whose names appear on a certificate of incumbency executed by the Secretary of the Borrower and delivered concurrently with the execution of this Agreement, as such certificate of incumbency may be amended from time to time to identify the names of the individuals then holding such offices and certified by the Secretary of the Borrower.

(29) “**Base Rate**” means, for any day, a rate per annum equal to the higher of (a) the Federal Funds Rate for such day plus 1/2 of 1% or (b) the Prime Rate for such day. Each change in any interest rate provided for herein based upon the Base Rate resulting from a change in the Base Rate shall take effect at the time of such change in the Base Rate.

(30) “**Base Rate Loans**” means Loans that bear interest at rates based upon the Base Rate.

(31) “**Best Buy Lease**” means that certain Lease, dated June 29, 2007, between Borrower and Best Buy Stores, L.P., a Virginia limited partnership.

(32) “**Bifurcation**” has the meaning assigned to such term in Section 12.28.

(33) “**Bond**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(34) “**Borrower**” has the meaning assigned to such term in the Preamble. With respect to the definition of “Borrower”, except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.

(35) “**Borrower Party**” means Borrower, any Guarantor or Managing Member.

(36) “**Borrower’s Architect**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(37) “**Borrower’s Architect’s Agreement**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(38) “**Borrower’s Project Interest**” means, from and after the establishment of the Condominium, collectively, Borrower’s right, title and interest in and to: (a) all Units; (b) the Improvements; (c) the Project Amenities; (d) Borrower’s rights, powers, privileges and obligations (including, without limitation, maintenance obligations and rights to reimbursement with respect to the Units and Project Amenities), whether as the Declarant or otherwise, under

the Condominium Declaration; and (e) all other right, title and interest of Borrower in and to the Project, together with rights and appurtenances to the interests described in clause (a) through (d) above.

(39) “**Budget**” means the budget attached as Exhibit B hereto as the same may be modified from time to time in accordance with the provisions of this Agreement.

(40) “**Budget Line Items**” has the meaning assigned to such term in Section 4.5.

(41) “**Building Loan**” and “**Building Loans**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(42) “**Building Loan Agreement**” has the meaning assigned to such term in the Recitals.

(43) “**Building Loan Commitment**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(44) “**Building Loan Mortgage**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(45) “**Building Loan Notes**” shall mean, collectively, the promissory note given to each of the Lenders, each note in principal amount equal to such Lender’s Building Loan Commitment and substantially in the form of Exhibit C-2 attached hereto, to be executed, dated and delivered by Borrower to each of the Lenders as of the Closing Date, secured by the Building Loan Mortgage, as the same may be modified, amended and/or supplemented and in effect from time to time.

(46) “**Business Day**” means (a) any day other than a Saturday, a Sunday, or other day on which commercial banks located in New York City are authorized or required by law to remain closed and (b) in connection with a borrowing of, a payment or prepayment of principal of or interest on, a Conversion of or into, or an Interest Period for, a LIBOR-based Loan or a notice by Lead Borrower with respect to any such borrowing, payment, prepayment or Conversion, the term “Business Day” shall also exclude a day on which banks are not open for dealings in Dollar deposits in the London interbank market.

(47) “**Cash Management Agreement**” means that certain Cash Management and Security Agreement which may be executed and delivered by Borrower, Administrative Agent (on behalf of the Lenders) and the Depository Bank in accordance with the terms and provisions of Section 15.1, as the same may be modified, amended and/or supplemented and in effect from time to time.

(48) “**Change in Law**” means, to the extent that the Administrative Agent, the Lenders, the Borrower or the Project is subject thereto or required to comply therewith, the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or

(c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

(49) “**Change of Control**” shall mean any transaction, transfer, admission, redemption, withdrawal, change in organizational documents or structure, or otherwise, whether directly or indirectly, as a result of which (a)(i) Sponsor, whether directly or indirectly, owns less than 18% of the membership interests in and rights to distributions from Borrower, or (ii) any Person other than Managing Member has the responsibility for managing and administering the day-to day business and affairs of Borrower or (iii) in any other respects, any Person other than Sponsor directly or indirectly Control Borrower, (b) (i) Sponsor no longer directly or indirectly owns at least 18% of the membership interests in and rights to distributions from the Managing Member, or (ii) Sponsor no longer directly or indirectly has responsibility for managing and administering the day-to day business and affairs of the Managing Member or (iii) in any other respects, any Person other than Sponsor directly or indirectly Controls the Managing Member, (c)(i) anyone other than Acadia Realty Trust, whether directly or indirectly, owns less than 75% of the partnership interests in Sponsor, or (ii) any Person other than Acadia Realty Trust has the responsibility for managing and administering the day-to day business and affairs of Sponsor or (iii) in any other respects, any Person other than Acadia Realty Trust directly or indirectly Controls Sponsor, or (d) a change in the management control of Acadia Realty Trust such that Kenneth F. Bernstein is no longer the Chief Executive Officer of Acadia Realty Trust or Kenneth F. Bernstein fails to devote a substantial amount of his business time and attention in any consecutive six (6) month period to the affairs of Acadia Realty Trust; provided, however, such occurrence shall not be an Event of Default if within sixty (60) days of the occurrence thereof the Administrative Agent approves, in the exercise of its reasonable judgment, the replacement or successor management of Acadia Realty Trust. As used in this definition, “**Control**” of one Person (the “controlled Person”) by another Person (the “**controlling Person**”) shall mean the possession, directly or indirectly, by the controlling Person of the power or ability to direct or cause the direction of the management or policies of the controlled Person, whether through the ability to exercise voting power, by contract or otherwise (“**Controlled**” and “**Controlling**” each have the meanings correlative thereto).

(50) “**Change Order**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(51) “**Closing Date**” means the date of this Agreement.

(52) “**Co-Borrower Documents**” means collectively, the Contribution Agreement, the Co-Borrower Guaranty (Acquisitions) and the Co-Borrower Guaranty (Office).

(53) “**Co-Borrower Guaranty (Acquisitions)**” means the Co-Borrower Guaranty by Lead Borrower in favor of Administrative Agent on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(54) “**Co-Borrower Guaranty (Office)**” means the Co-Borrower Guaranty by Fordham Office in favor of Administrative Agent on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(55) “**Collateral Letter of Credit**” means a clean, irrevocable and unconditional standby letter of credit that is (a) issued for the account of an applicant other than Borrower, (b) issued in favor of Administrative Agent (on behalf of the Lenders), (c) issued by an issuer having a paying office in the City of New York and having a rating with respect thereto of “A” or better by S&P and an equivalent rating from Moody’s, or such other issuer as shall be approved by the Administrative Agent in its sole and absolute discretion, (d) drawable, in whole or in part, from time to time, by Administrative Agent upon the presentment to the issuer of a clean sight-draft demanding such payment, (e) an “evergreen” letter of credit that initially has an expiration date of at least one (1) year from the date of deposit and is automatically renewed from year to year or one which does not expire until at least thirty (30) Business Days after the Maturity Date, and (f) freely assignable upon presentation of customary documents by Administrative Agent at no cost and expense to Administrative Agent.

(56) “**Commitment**” means, as to each Lender, the aggregate Acquisition Loan Commitment, Project Loan Commitment and Building Loan Commitment.

(57) “**Completion Date**” means the earlier of (a) twenty (20) months after the Closing Date, as such date may be extended due to Unavoidable Delays; provided, however, that in no event shall the Completion Date extend beyond the date which is twenty-four (24) months after the Closing Date, or (b) the effective date of any cancellation or termination right under any Major Lease due to the failure to complete any portion of the Project Completion Work, unless such cancellation or termination date is extended or waived by Tenant.

(58) “**Condominium**” means that certain condominium established pursuant to the Condominium Declaration.

(59) “**Condominium Act**” means Article 9-B of the Real Property Law of the State of New York (§ 339-d et seq.), and all amendments, modifications or replacements thereof or regulations with respect thereto, now or hereafter enacted or promulgated.

(60) “**Condominium Declaration**” means that certain Condominium Declaration filed with the Attorney General’s Office of the State of New York and approved by Administrative Agent after the Closing Date for the purpose of creating the Condominium.

(61) “**Condominium Documents**” means the Condominium Declaration, the by-laws of any owner’s association to be established pursuant to the Condominium Declaration to govern the affairs of the Condominium, and any other document, instrument or agreement creating, governing or affecting the Condominium.

(62) “**Consent and Agreement**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(63) “**Construction Consultant**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(64) “**Construction, Cost and Plan Review**” means a report of the Construction Consultant, dated October 3, 2007 and in form and substance reasonably satisfactory to Administrative Agent, as to the Budget, the Plans and Specifications, the

construction plan, the Construction Schedule, and as to such other matters as Administrative Agent may reasonably request, including, without limitation, a detailed plan and cost review.

(65) “**Construction Management Agreement**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(66) “**Construction Manager**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(67) “**Construction Schedule**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(68) “**Construction Work**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(69) “**Consumer Price Index**” means the consumer price index for the New York City area for all Urban Consumers-All Items, published monthly by the Bureau of Labor Statistics of the United States Department of Labor.

(70) “**Contingency Fund**” has the meaning assigned to such term in Section 4.4.

(71) “**Continue**” “**Continuation**” and “**Continued**” refer to the continuation pursuant to Section 2.2 of (a) a LIBOR-based Loan from one Interest Period to the next Interest Period or (b) a Base Rate Loan at the Base Rate.

(72) “**Contribution Agreement**” means the Indemnity, Subrogation and Contribution Agreement among Lead Borrower, Fordham Office and Administrative Agent on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(73) “**Controlled Account**” means one or more deposit accounts established by Administrative Agent (for the benefit of the Lenders) at a Depository Bank that is acceptable to Administrative Agent, and which is established and maintained in accordance with the terms and provisions hereof.

(74) “**Controlled Account Agreement**” shall have the meaning assigned to such term in Section 16.1(1)(a).

(75) “**Controlled Account Collateral**” shall have the meaning assigned to such term in Section 16.1(3)(a).

(76) “**Convert**” “**Conversion**” and “**Converted**” refer to a conversion pursuant to the terms of this Agreement of one Type of Loans into another Type of Loans, which may be accompanied by the transfer by a Lender (at its sole discretion) of a Loan from one Applicable Lending Office to another.

(77) “**Cost of Improvement**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(78) “**Date Down Endorsement**” means any date down endorsement to the Title Policies or other evidence of date down of title acceptable to Administrative Agent in its reasonable discretion covering (a) disbursements of loan proceeds made or to be made subsequent to the date of the Title Policies and (b) the period subsequent to the date of the Title Policies.

(79) “**Debt**” means, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable, if such amounts were advanced under the credit facility, (c) all amounts required to be paid by such Person as a guaranteed payment to partners, members (or other equity holders) or a preferred or special dividend, including any mandatory redemption of shares or interests, (d) all indebtedness guaranteed by such Person, directly or indirectly, (e) all obligations under leases that constitute capital leases for which such Person is liable, and (f) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

(80) “**Declarant**” means Acadia-PA East Fordham Acquisitions, LLC in its capacity as the declarant named in the Condominium Declaration.

(81) “**Default Rate**” means the rate per annum from time to time applicable to Base Rate Loans plus 5%; provided, however, that in no event shall the Default Rate exceed the maximum rate allowed by Applicable Law.

(82) “**Defaulting Lender**” has the meaning assigned in Section 14.12(1).

(83) “**Deficiency Deposit Account**” has the meaning assigned to such term in Section 4.3(1)(b).

(84) “**Deficiency Deposit**” has the meaning assigned in Section 4.3(1)(b).

(85) “**Depository Bank**” means at any time any depository bank which is party to a Controlled Account Agreement.

(86) “**Design Professional**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(87) “**Dollars**” and “**\$**” means lawful money of the United States of America.

(88) “**Eligible Assignee**” means any of (i) a commercial bank organized under the Laws of the United States, or any State thereof, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization of Economic Cooperation and Development (“**OECD**”), or a political subdivision of any such country, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined

capital and surplus of at least \$250,000,000, provided that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of OECD; (iii) a life insurance company organized under the Laws of any State of the United States, or organized under the Laws of any country and licensed as a life insurer by any State within the United States and having admitted assets of at least \$1,000,000,000; (iv) a nationally recognized investment banking company or other financial institution in the business of making loans, or an Affiliate thereof (other than any Person which is directly or indirectly a Borrower Party or directly or indirectly an Affiliate of any Borrower Party) organized under the Laws of any State of the United States, and licensed or qualified to conduct such business under the Laws of any such State and having (1) total assets of at least \$1,000,000,000 and (2) a net worth of at least \$250,000,000; (v) an Approved Fund; (vi) any Affiliate of Eurohypo, any other Person into which, or with which, Eurohypo is merged, consolidated or reorganized, or which is otherwise a successor to Eurohypo by operation of law, or which acquires all or substantially all of the assets of Eurohypo, any other Person which is a successor to the business operations of Eurohypo and engages in substantially the same activities, or any Affiliate of any of the foregoing; or (vii) any other Person reasonably acceptable to Borrower (to the extent Borrower's consent to an assignment is required for an assignment to a Person other than those identified in clauses (i) through (vi) above, pursuant to Section 12.23(1), and provided that all other applicable conditions to such assignment set forth in Section 12.23(1) have been satisfied, including any applicable consent thereto to be delivered by Administrative Agent.

(89) "**Environmental Indemnity**" means that certain Environmental Indemnity Agreement by Borrower and Guarantor in favor of Administrative Agent and each of the Lenders, to be executed, dated and delivered to Administrative Agent (on behalf of the Lenders) on the Closing Date, as the same may be modified, amended and/or supplemented and in effect from time to time.

(90) "**Equity Balancing Contribution**" has the meaning assigned in Section 4.3.

(91) "**Eurohypo**" means Eurohypo AG, New York Branch.

(92) "**Eurohypo Counterparty**" means Eurohypo and or (a) any Affiliate of Eurohypo, (b) any other Person into which, or with which, Eurohypo is merged, consolidated or reorganized, or which is otherwise a successor to Eurohypo by operation of law, or which acquires all or substantially all of the assets of Eurohypo, (c) any other Person which is a successor to the business operations of Eurohypo and engages in substantially the same activities, or (d) any Affiliate of any of the Persons described in clauses (b) and (c) of this definition.

(93) "**Event of Default**" has the meaning assigned in Article 10.

(94) "**Excluded Taxes**" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in

which its principal office is located or, in the case of any Lender, in which its Applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrower under Section 2.7(7)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Applicable Lending Office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 2.7(6)(e) except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Applicable Lending Office (or assignment), to receive additional amounts from Borrower with respect to such withholding tax pursuant to Section 2.7(6)(a).

(95) "**Exculpated Party**" has the meaning assigned to such term in Section 13.1.

(96) "**Existing Tenant**" means (i) Sears, Roebuck and Co., a New York corporation (ii) Best Buy Stores, L.P., a Virginia limited partnership, (iii) Walgreen Eastern Co., Inc., a New York corporation and (iv) 24 Hour Fitness USA, Inc., a California corporation.

(97) "**Exit Fee**" has the meaning assigned to such term in Section 2.9.

(98) "**Extension Period**" means the First Extension Period, the Second Extension Period and/or the Third Extension Period, as applicable.

(99) "**Federal Bankruptcy Code**" shall mean Title 11 of the United States Code entitled "Bankruptcy" as amended from time to time, and any successor statutes and rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditor's rights.

(100) "**Federal Funds Rate**" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, provided that (a) if such day is not a Business Day, the Federal Funds Rate for the immediately preceding Business Day shall be applicable, as determined by Administrative Agent, or such other commercial bank as selected by Administrative Agent.

(101) "**Fee Letter**" means the letter agreement, dated the date hereof, between Borrower and Administrative Agent with respect to certain fees payable by Borrower in connection with the Loans, as the same may be modified or amended from time to time.

(102) "**First Extension Period**" has the meaning assigned to such term in Section 2.5(1).

(103) "**First Extension Notice**" has the meaning assigned to such term in Section 2.5(1)(a).

(104) “**Flood Insurance Acts**” has the meaning assigned to such term in Section 3.1(1)(g).

(105) “**Foreign Lender**” means any Lender that is organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

(106) “**GAAP**” means accounting principles generally accepted in the United States of America.

(107) “**General Assignment**” means the Assignment of Contracts, Government Approvals and Other Project Documents, executed by Borrower in favor of Administrative Agent (on behalf of the Lenders), as the same may be modified, supplemented and/or amended from time to time.

(108) “**Government Approval**” means any action, authorization, consent, approval, license, lease, ruling, permit, tariff, certification, exemption, filing or registration by or with any Governmental Authority, including all licenses, permits, allocations, authorizations, approvals and certificates obtained by or in the name of, or assigned to, Borrower and used in connection with the ownership, construction, operation, use or occupancy of the Project, including building permits, zoning and planning approvals, business licenses, licenses to conduct business, certificates of occupancy and all such other permits, licenses and rights.

(109) “**Governmental Authority**” means any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, federal, state, local, or foreign having jurisdiction over the matter or matters in question.

(110) “**Guaranty of Completion**” means the Completion Guaranty executed by Guarantor to Administrative Agent (on behalf of the Lenders) on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(111) “**Guarantor**” means Acadia Strategic Opportunity Fund II, LLC.

(112) “**Guarantor Documents**” means collectively, the Guaranty of Completion, the Recourse Guaranty, and the Environmental Indemnity.

(113) “**Hard Costs**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(114) “**Hazardous Materials**” has the meaning assigned in Section 5.1(5).

(115) “**Hedge Agreement**” means any interest rate hedge agreement between Borrower and Eurohypo or one or more financial institutions providing for the transfer or mitigation of interest risks either generally or under specific contingencies, as the same may be modified, amended and/or supplemented and in effect from time to time.

(116) “**Hedge Pledge**” means that certain Pledge and Security Agreement, to be executed, dated and delivered by Borrower to Administrative Agent at any time Borrower elects to enter into a Hedge Agreement, as the same may be modified, amended and/or supplemented and in effect from time to time.

(117) “**Improvements**” means, an approximately 285,000 square foot mixed-use retail/office building to be comprised, following completion of the Construction Work, of (a) approximately 125,000 square feet of retail space (the “**Retail Component**”), (b) an approximately 160,000 square foot, 14-story, Class A office tower (the “**Office Component**”), (c) all storage space contained therein, all signage improvements and all of the other improvements to be constructed on the Land, as more particularly described in the Plans and Specifications, and (d) the Tenant Improvement Work, to the extent required pursuant to Approved Leases.

(118) “**In Balance**” has the meaning assigned to such term in Section 4.3.

(119) “**Indebtedness**” has the meaning assigned to such term in the Mortgages.

(120) “**Indemnified Taxes**” means all Taxes other than Excluded Taxes.

(121) “**Independent Manager**” means, in the case of a corporation, limited liability company or limited partnership, a director, member or manager that is a natural person who has no affiliation with any Borrower Party and who is approved by Administrative Agent.

(122) “**Initial Equity Contribution**” means the amount of unreimbursed equity contributed by Borrower as a cash contribution to the Project including, without limitation, acquisition cost and development costs, prior to the initial funding of the Loans and as a condition thereto, which amount (subject to Schedule 4 — Part A, paragraph 30) shall be not less than \$24,479,400.00 as verified by Administrative Agent pursuant to Schedule 4 — Part A.

(123) “**Insurance Premiums**” has the meaning assigned in Section 4.4.

(124) “**Insurance Proceeds Deficiency**” has the meaning assigned to such term in Section 3.4(5).

(125) “**Interest Period**” means, with respect to any LIBOR-based Loan, each period commencing on the date such LIBOR-based Loan is made or Converted from a Base Rate Loan or (in the event of a Continuation) the last day of the immediately preceding Interest Period for such Loan and ending on the numerically corresponding day in the first, second, third, sixth or twelfth (if available from all Lenders) calendar month thereafter, as Lead Borrower may select as provided in Section 2.6(4); provided that (i) each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month; (ii) each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day (or, if such next succeeding Business Day falls in the next succeeding calendar month, on the immediately preceding Business Day); (iii) no Interest Period shall have a duration of less than one month and, if the Interest Period for any LIBOR-based Loan would otherwise be a shorter

period, such Loan shall bear interest at the Base Rate for Base Rate Loans; (iv) in no event shall any Interest Period extend beyond the Maturity Date; and (v) there may be no more than four (4) separate Interest Periods in respect of LIBOR-based Loans outstanding at any one time

(126) “**Interest Rate Hedge Period**” has the meaning assigned to such term in Section 9.15(1).

(127) “**Interest Reserve**” has the meaning assigned to such term in Section 4.3.

(128) “**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

(129) “**Land**” has the meaning assigned in the Recitals.

(130) “**Leasing Guidelines**” means the Leasing Guidelines described in Schedule 1.1(130) attached hereto.

(131) “**Lender**” and “**Lenders**” have the respective meanings assigned to such terms in the Preamble.

(132) “**Libor Rate**” means, for any Interest Period for any LIBOR-based Loan, the rate per annum appearing on Page 3750 of the Dow Jones (Telerate) Service (or on any successor or substitute page, or any successor to or substitute for such Service, as determined by Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to Dollar deposits in the London interbank market) at approximately 11:00 a.m. London time on the date two (2) Business Days prior to the first day of such Interest Period as the rate for the offering of Dollar deposits having a term comparable to such Interest Period, provided that if such rate does not appear on such page, or if such page shall cease to be publicly available, or if the information contained on such page, in the reasonable judgment of Administrative Agent shall cease accurately to reflect the rate offered by leading banks in the London interbank market as reported by any publicly available source of similar market data selected by Administrative Agent, the Libor Rate for such Interest Period shall be determined from such substitute financial reporting service as Administrative Agent in its reasonable discretion shall determine.

(133) “**LIBOR-based Loans**” means Loans that bear interest at rates based on rates referred to in the definition of “Libor Rate.”

(134) “**Lien**” means any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

(135) "**Lien Law**" means the Lien Law of the State of New York, as amended from time to time.

(136) "**Loans**" means the loans to be made by the Lenders to Borrower under this Agreement and all other amounts evidenced or secured by the Loan Documents.

(137) "**Loan Documents**" means: (a) this Agreement, (b) the Building Loan Agreement, (c) the Notes, (d) the Guarantor Documents, (e) the Security Documents, (f) the Co-Borrower Documents, (g) each Consent and Agreement, (h) any letter of credit provided to Administrative Agent in connection with the Loan (i) the Environmental Indemnity, (j) the Fee Letter, (k) the Subordination of Property Management Agreement, (l) such assignments of management agreements, contracts and other rights as may be required by Administrative Agent, (m) all other documents evidencing, securing, governing or otherwise pertaining to the Loans, and (n) all modifications, amendments, supplements or replacements of any of the foregoing.

(138) "**Loan Transactions**" has the meaning assigned to such term in Section 2.6(3).

(139) "**Major Contract**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(140) "**Major Contractor**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(141) "**Major Lease**" means any lease with an Existing Tenant and any other lease that (a) accounts for five percent (5%) or more of the total gross rental revenue of the Project and/or (b) is for 10,000 rentable square feet or more.

(142) "**Majority Lenders**" means Lenders holding at least 66 2/3% of the aggregate outstanding principal amount of the Loans or, if the Loans shall not have been made, at least 66 2/3% of the Commitments.

(143) "**Managing Member**" means Acadia-P/A Holding Company, LLC, a Delaware limited liability company, as sole member under the organizational documents of Borrower and its successors as permitted under the Loan Documents.

(144) "**Material Adverse Effect**" means a material adverse effect, as determined by Administrative Agent, in its reasonable judgment and discretion, on (a) the Project or the business, operations, financial condition, liabilities or capitalization of Borrower, (b) the ability of Borrower to perform its obligations under any of the Loan Documents to which it is a party, including the timely payment of the principal or interest on the Loans or other amounts payable in connection therewith, (c) the ability of any Borrower Party to perform its obligations under any of the Loan Documents to which it is a party, (d) the validity or enforceability of any of the Loan Documents or (e) the rights and remedies of the Lenders and Administrative Agent under any of the Loan Documents.

(145) "**Maturity Date**" means the earlier of (a) October 5, 2009, as such date may be extended pursuant to Section 2.5, or (b) any earlier date on which all of the Loans are

required to be paid in full, by acceleration or otherwise, under this Agreement or any of the other Loan Documents.

(146) “**Mezzanine Borrower(s)**” has the meaning assigned in Section 12.28.

(147) “**Mezzanine Option**” has the meaning assigned in Section 12.28.

(148) “**Minor Contract**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(149) “**Minor Contractor**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(150) “**Mold**” has the meaning assigned to such term in Section 5.1(6).

(151) “**Moody’s**” means Moody’s Investor Services, Inc.

(152) “**Mortgages**” means, collectively, the (a) Project Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, (b) the Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing and (c) the Acquisition Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, each executed by Borrower in favor of Administrative Agent (on behalf of the Lenders), covering the Project, as the same may be modified, amended and/or supplemented and in effect from time to time.

(153) “**Mortgage Borrower**” has the meaning assigned in Section 12.28(2).

(154) “**Mortgage Loan**” has the meaning assigned in Section 12.28(2).

(155) “**Net Operating Income**” means the amount by which Operating Revenues exceed Operating Expenses.

(156) “**Notes**” means, collectively, the Acquisition Loan Notes, the Project Loan Notes and the Building Loan Notes.

(157) “**Notice of Default**” has the meaning assigned in Section 14.3(1).

(158) “**Occupancy**” or “**Occupy**” means (a) with respect to any tenant (other than tenants and licensees covered by clause (b) below), such tenant shall have (i) accepted (or been deemed to have accepted in accordance with the terms of its lease) the delivery of all or substantially all of the space to be demised under the terms of its respective lease, including any Tenant Improvement Work to be performed by Borrower, subject in each case to Punch List Items, and (ii) commenced paying rent in accordance with the terms and conditions of its lease, and (b) with respect to any licensee of the signage or antenna tenants or licensees at the Project, such licensee or tenant, as applicable, shall have accepted the delivery of all of its respective premises, including any Tenant Improvement Work to be performed by Borrower.

(159) “**OECD**” has the meaning assigned to such term in the definition of “Eligible Assignee” herein.

(160) “**Office Component**” has the meaning assigned to such term in the definition of “Improvements” herein.

(161) “**Operating Expenses**” means all reasonable and necessary expenses of operating the Project in the ordinary course of business which are paid in cash by Borrower and which are directly associated with and fairly allocable to the Project for the applicable period, including ad valorem real estate taxes and assessments, insurance premiums, regularly scheduled tax impounds paid to Administrative Agent, maintenance costs (including, without limitation, costs required to be incurred pursuant to the Condominium Declaration), property management fees and costs not to exceed four percent (4%) of Operating Revenues, accounting, legal, and other professional fees, and other expenses incurred by Administrative Agent and reimbursed by Borrower under this Agreement and the other Loan Documents, deposits to any capital reserves required by Administrative Agent, wages, salaries, personnel expenses, but excluding debt service, capital expenditures, any of the foregoing expenses which are paid from deposits to cash reserves previously included as Operating Expenses, any payment or expense for which Borrower was or is to be reimbursed from proceeds of the Loans or insurance or by any third party, and any non-cash charges such as depreciation and amortization. Any management fee or other expense payable to Borrower or to an Affiliate of Borrower shall be included as an Operating Expense only with Administrative Agent’s prior approval. Operating Expenses shall not include federal, state or local income taxes or legal and other professional fees unrelated to the operation of the Project.

(162) “**Operating Revenues**” means all cash receipts of Borrower from operation of the Project or otherwise arising in respect of the Project after the date hereof which are properly allocable to the Project for the applicable period, including receipts from leases and parking agreements, concession fees and charges and other miscellaneous operating revenues, proceeds from rental or business interruption insurance, proceeds of any loans (other than the Loans and any refinancing of the Loans) obtained by Borrower after the date hereof which are secured by the Project (less reasonable and customary expenses incurred in procuring and closing such loan and actually paid in cash to individuals or entities other than Borrower or any Affiliate of Borrower and without implying any consent of Administrative Agent or any Lender to the granting of any security for any such loans), withdrawals from cash reserves (except to the extent any operating expenses paid therewith are excluded from Operating Expenses), in all cases, determined in accordance with GAAP, but excluding (a) security deposits and earnest money deposits until they are forfeited by the depositor, (b) advance rentals (i.e. more than thirty (30) days in advance) until they are earned, (c) lump sum lease buy-out payments made by tenants in connection with any surrender, cancellation or termination of their lease, except to the extent equitably spread over the remaining months of the term of such lease, and (d) proceeds from a sale or other disposition.

(163) “**Other Taxes**” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

(164) “**Participant**” has the meaning assigned to such term in Section 12.23(3).

(165) “**Payment Date**” means the first Business Day of each calendar month.

(166) “**Patriot Act**” means the USA PATRIOT Act of 2001, Pub. L. No. 107 56.

(167) “**Payor**” has the meaning assigned to such term in Section 2.6(5).

(168) “**Permitted Encumbrances**” means with respect to the Project, those exceptions to title set forth in the Title Policies issued to Administrative Agent pursuant to Schedule 4.

(169) “**Permitted Transfer**” shall mean any of the following transfers, provided there is no Change of Control as a result of such transfer:

(a) a transfer by devise or descent or by operation of law upon the death of a member, partner or shareholder of Borrower or any Affiliate of Borrower, so long as Lead Borrower delivers notice to Administrative Agent as soon as practicable thereafter and that Borrower or such Affiliate is promptly reconstituted, if applicable, following the death of such member partner or shareholder;

(b) transfers for estate planning purposes of an individual’s interest in Borrower or any Affiliate of Borrower to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower or such Affiliate is reconstituted, if required, following such transfer;

(c) the sale or pledge, in one or a series of transactions, of the stock, limited partnership interests or non-managing membership interests (as the case may be) in Borrower or an Affiliate of Borrower; provided, however, that no such transfers shall result in any sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of the Project, and as a condition to each such transfer, Administrative Agent shall receive no less than thirty (30) days prior written notice of such proposed transfer;

(d) a transfer by P/A Associates, LLC (“**P/A Associates**”) of 100% of its member interest in Managing Member to Acadia Strategic Opportunity Fund II, LLC (“**Fund II**”) or an Affiliate of Fund II;

(e) the sale, transfer, or issuance of stock in Acadia Realty Trust (the “**Trust**”), in the ordinary course of business, provided such stock is listed on the NYSE or other nationally recognized stock exchange; and

(f) a transfer made pursuant to Section 17.3.

(170) “**Permitting Schedule**” has the meaning assigned to such term in Section 7.6.

(171) “**Person**” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

(172) “**Plans and Specifications**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(173) “**Policy**” and “**Policies**” have the respective meanings assigned to such terms in Section 3.1(2).

(174) “**Potential Default**” means the occurrence of any event or condition which, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

(175) “**Prime Rate**” means the rate of interest from time to time announced by Eurohypo at its principal U.S. office as its prime commercial lending rate, it being understood that such prime commercial rate is a reference rate and does not necessarily represent the lowest or best rate being charged by Eurohypo to any customer.

(176) “**Prohibited Person**” shall mean any Person:

(a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the “**Executive Order**”);

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) with whom any Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who is known to Borrower to commit, threaten or conspire to commit or support “terrorism”, as defined in the Executive Order;

(e) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/t11sdn.pdf> or at any replacement website or other replacement official publication of such list; or

(f) who is known to Borrower to be an Affiliate of or affiliated with a Person listed above.

(177) “**Project**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(178) “**Project Amenities**” means those areas or elements of, easements over, interests in or licenses or rights to use, those portions of the Project that are granted to Units in the Condominium Declaration.

(179) “**Project Completion Work**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(180) “**Project Costs**” means, collectively, the Project Loan Costs, the Hard Costs and the Soft Costs.

(181) “**Project Documents**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(182) “**Project Loan**” and “**Project Loans**” have the respective meaning assigned to such terms in Section 2.1(1)(a).

(183) “**Project Loan Budget**” shall mean the portion of the Budget designated as the Project Loan Budget, as the same may be modified from time to time in accordance with the provisions of this Agreement.

(184) “**Project Loan Commitment**” means, as to each Lender, the obligation of such Lender to make Project Loans in a principal amount up to but not exceeding the amount set opposite the name of such Lender on Schedule 1 under the captions “Project Loan Commitment” or, in the case of a Person that becomes a Lender pursuant to an assignment permitted under Section 12.23(1), as specified in the respective instrument of assignment pursuant to which such assignment is effected.

(185) “**Project Loan Costs**” shall mean any costs relating to the construction of the Project, including Tenant Improvement Allowances, which do not constitute a Cost of Improvement.

(186) “**Project Loan Mortgage**” shall mean the Project Loan Mortgage, Assignment of Leases and Rents and Security Agreement in the amount of the Total Project Loan Commitment and executed, dated and delivered by Borrower, to Administrative Agent (on behalf of the Lenders) on the Closing Date, securing the Project Loan Notes, as the same may be modified, amended and/or supplemented and in effect from time to time.

(187) “**Project Loan Notes**” shall mean, collectively, the promissory note given to each of the Lenders, each note in principal amount equal to such Lender’s Project Loan Commitment and substantially in the form of Exhibit C-1 attached hereto, to be executed, dated and delivered by Borrower to each of the Lenders as of the Closing Date, secured by the Project Loan Mortgage, as the same may be modified, amended and/or supplemented and in effect from time to time.

(188) “**Project Work Substantial Completion Conditions**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(189) “**Property Management Agreement**” means that certain Property Management Agreement dated as of August 15, 2007 between Property Manager and Borrower with respect to the management of the Project by the Property Manager, together with any property management agreements entered into with future Property Managers in accordance with the terms of this Agreement.

(190) “**Property Manager**” means Acadia-P/A Management Services, LLC, a Delaware limited liability company, which is initially the manager of the Project under the Property Management Agreement, together with any successor property managers appointed for the Project in accordance with the terms of this Agreement.

(191) “**Property Transfer**” has the meaning assigned to such term in Section 17.3.

(192) “**Property Transfer Conditions**” has the meaning assigned to such term in Section 17.3

(193) “**Proportionate Share**” means, with respect to each Lender, initially the percentage set forth opposite such Lender’s name on Schedule 1.1(193) attached hereto, as such percentage may be modified from time to time pursuant to Assignment and Acceptances and as recorded in Administrative Agent’s register of Lenders for the Loan.

(194) “**Proposed Lender**” has the meaning assigned to such term in Section 2.7(7).

(195) “**Punch List Items**” has the meaning assigned to term in Section 1.1 of the Building Loan Agreement.

(196) “**Qualified Manager**” shall mean either (x) Acadia-P/A Management Services LLC or (y) a reputable and experienced management organization possessing experience (or having principals possessing experience) of not less than ten (10) years managing projects which are similar in size, scope, class, use and value to the Project and is (or has principals currently) managing at least ten (10) properties similar in size, scope, class, use and value as the Project.

(197) “**Real Estate Taxes**” has the meaning assigned to such term in Section 9.3.

(198) “**Recourse Guaranty**” means the Recourse Guaranty executed by Guarantor to Administrative Agent (on behalf of the Lenders) on the Closing Date, as the same may be modified, supplemented or amended from time to time.

(199) “**Regulation D**” means Regulation D of the Board of Governors of the Federal Reserve System of the United States of America (or any successor), as the same may be modified and in effect from time to time.

(200) “**Replacement Lender**” has the meaning assigned to such term in Section 14.12(6).

- (201) “**Request for Loan Advance**” has the meaning assigned to such term in Section 4.2.
- (202) “**Requesting Lender**” has the meaning assigned to such term in Section 2.7(7).
- (203) “**Required Payment**” has the meaning assigned to such term in Section 2.6(5).
- (204) “**Restoration Consultant**” has the meaning assigned to such term in Section 3.4(2).
- (205) “**Retail Component**” has the meaning assigned to such term in the definition of “Improvements” herein.
- (206) “**Retainage**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.
- (207) “**S&P**” means Standard & Poor’s Ratings Service, a division of The McGraw Hill Companies, Inc.
- (208) “**Second Extension Period**” has the meaning assigned to such term in Section 2.5(2).
- (209) “**Second Extension Notice**” has the meaning assigned to such term in Section 2.5(2)(a).
- (210) “**Security Accounts**” means, collectively, the Sweep Account and the Deficiency Deposit Account.
- (211) “**Security Account Collateral**” has the meaning assigned to such term in Section 15.2(1).

(212) “**Security Documents**” means collectively, the Mortgages, the Construction Manager’s Consent, the Subordination of Property Management Agreement, any Controlled Account Agreement and all Uniform Commercial Code financing statements filed or to be filed to perfect any security interests arising under any of the Loan Documents.

(213) “**Single Purpose Entity**” shall mean a corporation, limited partnership or limited liability company which at all times on and after the date hereof, unless otherwise approved in writing by Administrative Agent:

(a) is organized solely for the purpose of one of the following: (a) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Project, entering into this Agreement, refinancing the Project in connection with a permitted repayment of the Loans, and transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing or (b) acting as the sole managing member of Borrower;

(b) is not engaged and will not engage in any business unrelated to (a) the acquisition, development, ownership, management or operation of the Project or (b) acting as the sole managing member of Borrower;

(c) does not have and will not have any assets other than those related to (a) the Project or (b) its membership interest in Borrower;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of partnership or membership interests in violation of this Agreement (if such entity is a general partner in a limited partnership or a member in a limited liability company), or any amendment of its articles of incorporation, by-laws, limited partnership certificate, limited partnership agreement, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition without the prior written consent of Administrative Agent;

(e) in the case of Borrower, has and will have, as its only managing member, the Managing Member, which shall be a limited liability company that is a Single Purpose Entity and has at least one (1) Independent Manager;

(f) if such entity is (i) a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, (ii) a limited partnership, has a certificate of limited partnership and limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles of incorporation, that in each case provide that such entity shall not, without the consent without the unanimous written consent of all of its partners or members (and, in the case of the managing member of the Managing Member, its Independent Manager(s)): (a) dissolve, merge, liquidate or consolidate itself or any Person in which it has a direct or indirect legal or beneficial ownership interest; (b) sell all or substantially all of its assets or the assets of any other Person in which it has a direct or indirect legal or beneficial ownership interest; (c) engage in any other business activity or permit any Person in which it has a direct or indirect legal or beneficial ownership interest to engage in any other business activity, in each case except as permitted pursuant to the Loan Documents, (iv) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial ownership interest, or (v) amend its organizational documents with respect to the matters set forth in this definition without the consent of Administrative Agent;

(g) if such entity is a limited partnership, has as its only general partner a Single Purpose Entity;

(h) is and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(j) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns, except to the extent that it is required or permitted to file consolidated tax returns by law;

(k) has not commingled and will not commingle its funds or assets with those of any other Person;

(l) has held and will hold its assets in its own name;

(m) has maintained and will maintain financial statements that properly and accurately show its separate assets and liabilities and do not show the assets or liabilities of any other Person, and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity other than an Affiliate (but in such case noting that such entity and the Affiliate are separate entities);

(n) has maintained and will maintain a sufficient number of employees or has entered into appropriate alternative arrangements for workforce services in light of its contemplated business operations;

(o) has observed and will observe all corporate, partnership or limited liability company formalities, as applicable;

(p) has not incurred and will not incur any Debt other than (a) with respect to Borrower, the Loans and (b) trade and operational debt which is (i) incurred in the ordinary course of business, (ii) not more than sixty (60) days past due, (iii) with trade creditors, (iv) with respect to Borrower, in the aggregate, in an amount less than \$1,000,000, and (v) not evidenced by a note;

(q) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(r) has not and will not acquire obligations or securities of its members or shareholders or any other Affiliate;

(s) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including, but not limited to, paying for shared office space and services performed by any officer or employee of an Affiliate;

(t) maintains and uses and will maintain and use separate invoices and checks bearing its name. The stationary, invoices, and checks utilized by the Single Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Single Purpose Entity's agent;

(u) except in connection with the Loans, has not pledged and will not pledge its assets for the benefit of any other Person;

(v) has conducted business, held itself out and identified itself and will conduct business, hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by a Person other than an Affiliate of Borrower and not as a division or part of any other Person;

(w) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person (other than cash and securities issued by an entity that is not an Affiliate or subject to common ownership with such entity);

(x) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(y) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(z) has not and will not have any obligation to indemnify its partners, officers, directors or members, as the case may be, unless such obligation is fully subordinated to the Indebtedness and will not constitute a claim against it in the event that, after payment of the Indebtedness, cash flow is insufficient to pay such obligation; and

(aa) if such entity is a corporation, it is required to consider the interests of its creditors in connection with all corporate actions.

(214) "**Site Assessment**" means an environmental engineering report for the Project prepared by an engineer engaged by Administrative Agent at Borrower's expense, and in a manner and scope satisfactory to Administrative Agent.

(215) "**Soft Costs**" has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(216) "**Special Advance Lender**" has the meaning assigned to such term in Section 14.12(1).

(217) "**Sponsor**" means Acadia Realty Limited Partnership.

(218) "**State**" means the State of New York.

(219) "**Statutory Reserve Rate**" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar

Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

(220) “**Subguard Policy**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(221) “**Subordination of Property Management Agreement**” means that certain Subordination of Property Management Agreement, dated the date hereof, by the Property Manager in favor of Administrative Agent (on behalf of the Lenders), as the same may be modified, amended and/or supplemented and in effect from time to time.

(222) “**Survey**” means that certain survey delivered to Administrative Agent pursuant to Schedule 4 — Part A, paragraph 11 as the same may be modified from time to time.

(223) “**Sweep Account**” has the meaning assigned to such term in Section 15.1.

(224) “**Syndication**” has the meaning assigned to such term in Section 12.27.

(225) “**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

(226) “**Tenant Allowance Plans**” means, as to each tenant under an Approved Lease which is receiving any Tenant Improvement Allowance, the plans received by Borrower pursuant to the applicable Approved Lease and approved by Borrower and Borrower’s Architect covering tenant work under Tenant Improvement Allowances, to be certified by Borrower to Administrative Agent and the Lenders and approved by the applicable tenant, Borrower, all required Governmental Authorities, and either (x) within the Budget or (y) approved reasonably by Administrative Agent.

(227) “**Tenant Estoppel**” means an estoppel in form and substance reasonably acceptable to Administrative Agent, to be completed, executed, dated and delivered by the applicable tenant to Administrative Agent (on behalf of the Lenders) and Borrower pursuant to the terms of this Agreement.

(228) “**Tenant Improvement Allowances**” means allowances for Tenant Improvement Work.

(229) “**Tenant Improvement Plans**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(230) “**Tenant Improvement Work**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(231) “**Third Extension Period**” has the meaning assigned to such term in Section 2.5(3).

(232) “**Third Extension Notice**” has the meaning assigned to such term in Section 2.5(3)(a).

(233) “**Third-Party Counterparty**” has the meaning assigned to such term in Section 9.15(3).

(234) “**Third-Party Hedge Agreement**” has the meaning assigned to such term in Section 9.15(3).

(235) “**Threshold Amount**” means \$2,000,000.

(236) “**Title Insurer**” means, collectively, Royal Abstract of New York, LLC and NY Land Services, as co-insurers in amounts approved by Administrative Agent, through title insurance placed by Commonwealth Land Title Insurance Company, Stewart Title Insurance Company, and LandAmerica, respectively.

(237) “**Title Policies**” has the meaning assigned in Schedule 4 — Part A, paragraph 10.

(238) “**Total Acquisition Loan Commitment**” has the meaning assigned to such term in the Recitals.

(239) “**Total Building Loan Commitment**” has the meaning assigned to such term in the Recitals.

(240) “**Total Project Loan Commitment**” has the meaning assigned to such term in the Recitals.

(241) “**Type**” means the type of Loan made hereunder, i.e. whether such Loan is a Base Rate Loan or LIBOR-based Loan.

(242) “**Unavoidable Delay**” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

(243) “**Unit**” means each unit of the Condominium, together with all rights, interests and easements in and to the Project Amenities that are held by the owner of such unit as a result of the operation of the terms of the Condominium Declaration.

(244) “**Unit Annual Assessments**” means the assessments allocated to each Unit and collected by Declarant as set forth in the Condominium Declaration.

(245) “**Unpaid Amount**” has the meaning assigned to such term in Section 14.12(2).

(246) “Unsatisfactory Work” has the meaning assigned to such term in Section 1.1 of the Building Loan Agreement.

ARTICLE 2
LOAN TERMS

Section 2.1 The Commitments, Loans and Notes.

(1) Loans.

(a) Each Lender severally agrees, on the terms and conditions of this Agreement, to make loans (each advance of such a loan being a “**Project Loan**” and collectively, the “**Project Loans**”) on a non-revolving basis to Borrower in Dollars from time to time in amounts equal to its Proportionate Share of the aggregate amount of Project Loans to be made of such time; provided, however, that in no event shall the aggregate principal amount advanced by each Lender exceed the amount of the Project Loan Commitment of such Lender. The Project Loans shall be advanced for the payment of Project Loan Costs in accordance with the Project Loan Budget.

(b) Each Lender severally agrees, on the terms and conditions of this Agreement, to make loans (each advance of such a loan being an “**Acquisition Loan**” and collectively, the “**Acquisition Loans**”) on a non-revolving basis to Borrower in Dollars on the Closing Date in an amount equal to its Proportionate Share of the Total Acquisition Loan Commitment. The Acquisition Loans shall be advanced for purposes of re-financing Borrower’s cost of acquiring its interest in the Land.

(2) **Requests for Loan Advances.** Advances with respect to the Acquisition Loans shall be made on the Closing Date. With respect to the other Loans, Lead Borrower shall give Administrative Agent (and the Construction Consultant) a Request for Loan Advance as provided in Section 4.2. Administrative Agent shall give each Lender notice of any such Request for Loan Advance in accordance with Section 2.6(4). Not later than 12:00 noon New York time on the date specified for each Loan, each Lender shall make available for the account of its Applicable Lending Office to Administrative Agent as specified by Administrative Agent, in immediately available funds, such Lender’s Proportionate Share of each Loan to be made pursuant hereto. After Administrative Agent’s receipt of such funds and upon fulfillment of the applicable conditions set forth in Article 4 and Schedule 4, Administrative Agent shall make such funds available to Lead Borrower by depositing the same in an account designated by Lead Borrower by the end of business on the applicable advance date.

(3) Changes of Commitments.

(a) The respective Commitments shall reduce pro rata automatically by reason of any prepayment of the Loans applicable thereto in the amount of any such prepayment.

(b) If the Maturity Date is extended in accordance with Section 2.5, all of the unfunded Commitments (other than for Tenant Improvement Allowances with respect to

the Office Component and any remaining Retainage, which will terminate on the First Extension Maturity Date) then remaining at the commencement of the extended loan period shall be automatically terminated.

(4) **Lending Offices.** The Loans of each Lender shall be made and maintained at such Lender's Applicable Lending Office for Loans of such Type.

(5) **Severall Obligations.** The failure of any Lender to make any Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Loan, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Loan to be made by such other Lender.

(6) **Notes.**

(a) **Project Loan Notes.** The Project Loans made by each Lender shall be evidenced by a Project Loan Note of Borrower, payable to such Lender in a principal amount equal to the amount of its Project Loan Commitment as originally in effect and otherwise duly completed.

(b) **Building Loan Notes.** The Building Loans made by each Lender shall be evidenced by a Building Loan Note of Borrower, payable to such Lender in a principal amount equal to the amount of its Building Loan Commitment as originally in effect and otherwise duly completed.

(c) **Acquisition Loan Notes.** The Acquisition Loans made by each Lender shall be evidenced by an Acquisition Loan Note of Borrower, payable to such Lender in a principal amount equal to the amount of its Acquisition Loan Commitment as originally in effect and otherwise duly completed.

(d) **Substitution, Exchange and Subdivision of Notes.** No Lender shall be entitled to have its Notes substituted or exchanged for any reason, or subdivided for promissory notes of lesser denominations, except in connection with a permitted assignment of all or any portion of such Lender's Commitment, Loans and Notes pursuant to [Section 12.9](#) and [Section 12.23](#) (and, if requested by any Lender, Borrower agrees to so substitute or exchange any Notes and enter into note splitter agreements in connection therewith).

(e) **Loss, Theft, Destruction or Mutilation of Notes.** In the event of the loss, theft or destruction of any Note, upon Borrower's receipt of a reasonably satisfactory indemnification agreement executed in favor of Borrower by the holder of such Note, or in the event of the mutilation of any Note, upon the surrender of such mutilated Note by the holder thereof to Borrower, Borrower shall execute and deliver to such holder a new replacement Note in lieu of the lost, stolen, destroyed or mutilated Note.

Section 2.2 Conversions or Continuations of Loans

(1) Subject to Section 2.6(3), Section 2.7(2) and Section 2.7(3), Lead Borrower shall have the right to Convert Loans of one Type into Loans of another Type or Continue Loans of one Type as Loans of the same Type, at any time or from time to time;

provided that: (a) Lead Borrower shall give Administrative Agent notice of each such Conversion or Continuation as provided in Section 2.6(4); (b) LIBOR-based Loans may be Converted only on the last day of an Interest Period for such Loans unless Borrower complies with the terms of Section 2.7(5) and (c) subject to Section 2.7(1) and Section 2.7(3), any Conversion or Continuation of Loans shall be pro rata among the Lenders. Notwithstanding the foregoing, and without limiting the rights and remedies of Administrative Agent and the Lenders under Article 11, in the event that any Event of Default exists, Administrative Agent may (and at the request of the Majority Lenders shall) suspend the right of Lead Borrower to Convert any Loan into a LIBOR-based Loan, or to Continue any Loan as a LIBOR-based Loan for so long as such Event of Default exists, in which event all Loans shall be Converted (on the last day(s) of the respective Interest Periods therefor) or Continued, as the case may be, as Base Rate Loans. In connection with any such Conversion, a Lender may (at its sole discretion) transfer a Loan from one Applicable Lending Office to another.

(2) Notwithstanding anything to the contrary contained in this Agreement, at any time that a Hedge Agreement is in effect, Lead Borrower shall have the right to choose only an Interest Period with respect to the principal amount equal to the notional amount under such Hedge Agreement which is the same as the Interest Rate Hedge Period which is the same as the Interest Rate Hedge Period.

Section 2.3 Interest Rate; Late Charge.

(1) Borrower hereby promises to pay to Administrative Agent for account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of such Loan to but excluding the date such Loan shall be paid in full, at the following rates per annum:

(a) during such periods as such Loan is a Base Rate Loan, the Base Rate; and

(b) during such periods as such Loan is a LIBOR-based Loan, for each Interest Period relating thereto, the Adjusted Libor Rate for such Loan for such Interest Period plus the Applicable Margin.

(2) Accrued interest on each Loan shall be payable (i) monthly in arrears on each Payment Date and (ii) in the case of any Loan, upon the payment or prepayment thereof or the Conversion of such Loan to a Loan of another Type (but only on the principal amount so paid, prepaid or Converted), except that interest payable at the Default Rate shall be payable from time to time on demand.

(3) Notwithstanding anything to the contrary contained herein, after the Maturity Date and during any period when an Event of Default exists, Borrower shall pay to Administrative Agent for the account of each Lender (i) interest at the applicable Default Rate on the outstanding principal amount of any Loan made by such Lender, (ii) any interest payments thereon not paid when due and (iii) interest on any other amount payable by Borrower hereunder, under the Notes and any other Loan Documents.

(4) Promptly after the determination of any interest rate provided for herein or any change therein, Administrative Agent shall give notice thereof to the Lenders to which such interest is payable and to Lead Borrower, but the failure of Administrative Agent to provide such notice shall not affect Borrower's obligation for the payment of interest on the Loans.

(5) In addition to any sums due under this Section 2.3, Borrower shall pay to Administrative Agent for the account of the Lenders a late payment premium in the amount of five percent (5)% of any payments of interest or other sums under the Loans made more than five (5) days after the due date thereof (other than the principal balance due on the Maturity Date), which late payment premium shall be due with any such late payment or upon demand by Administrative Agent. Such late payment charge represents the reasonable estimate of Borrower and the Lenders of a fair average compensation for the loss that may be sustained by the Lenders due to the failure of Borrower to make timely payments. Such late charge shall be paid without prejudice to the right of Administrative Agent and the Lenders to collect any other amounts provided herein or in the other Loan Documents to be paid or to exercise any other rights or remedies under the Loan Documents.

(6) Borrower shall pay Additional Interest under the Notes in accordance with the terms of any Hedge Agreement provided by a Eurohypo Counterparty.

Section 2.4 Terms of Payment. The Loans shall be payable as follows:

(1) **Interest.** Borrower shall pay interest in arrears on each Payment Date in accordance with the wire transfer instructions set forth in Schedule 2.4(1) hereto (or such other instructions as Administrative Agent may from time to time provide) until all amounts due under the Loan Documents are paid in full. Subject to the provisions of Article 4 and Section 2.1, such accrued interest shall be payable from the interest reserves established pursuant to the Budget; provided, however, that such reserves shall not limit Borrower's obligation to pay such accrued interest.

(2) **Amounts Prepaid.** No amounts paid or prepaid by the Borrower under the Loans shall be available to be reborrowed by the Borrower.

(3) **Maturity.** On the Maturity Date, Borrower shall pay to Administrative Agent (on behalf of the Lenders) all outstanding principal, accrued and unpaid interest, and any other amounts due under the Loan Documents.

(4) **Optional Prepayments.** Subject to the provisions of Section 2.4(6) and Section 2.7(5), Borrower shall have the right to prepay Loans in whole or in part, without premium or penalty; provided that: (a) Lead Borrower shall give Administrative Agent notice of each such prepayment as provided in Section 2.6(4) (and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable hereunder) and (b) partial prepayments shall be in the minimum aggregate principal amounts specified in Section 2.6(3).

(5) **Mandatory Prepayments.** If a casualty or condemnation shall occur with respect to the Project, Borrower, upon Borrower's or Administrative Agent's receipt of the applicable insurance proceeds or condemnation award, shall prepay the Loan, if required by the

provisions of Article 3, on the dates and in the amounts specified therein without premium or penalty (but subject to the provisions of Section 2.4(6) and Section 2.7(5)). Nothing in this Section 2.4(5) shall be deemed to limit any obligation of Borrower under the Mortgages or any other Security Document, including any obligation to remit to a collateral or similar account maintained by Administrative Agent pursuant to the Mortgages or any of the other Security Documents the proceeds of insurance, condemnation award or other compensation received in respect of any casualty or condemnation. Prepayments pursuant to this Section 2.4(5) shall be applied to the Loans then outstanding pro rata in the order set forth in Section 2.4(6).

(6) **Interest and Other Charges on Prepayment.** If the Loans are prepaid, in whole or in part, pursuant to Section 2.4(4) or Section 2.4(5), each such prepayment shall be made on the prepayment date specified in the notice to Administrative Agent pursuant to Section 2.6(4), together with (a) the accrued and unpaid interest (including accrued and unpaid Additional Interest, if applicable (which may include certain early termination payments, in accordance with the terms of any applicable Hedge Agreement provided by a Eurohypo Counterparty)) on the principal amount prepaid, (b) any amounts payable to a Lender pursuant to Section 2.7(5) as a result of such prepayment while an Adjusted Libor Rate is in effect and (c) the Exit Fee, if any, payable pursuant to Section 2.9.

(7) **Application of Payments.** Lead Borrower shall, at the time of Borrower's making of each payment under this Agreement or any Note for the account of any Lender, specify to Administrative Agent (which shall so notify the intended recipient(s) thereof) the Loans or other amounts payable by Borrower hereunder to which such payment is to be applied (and in the event that Lead Borrower fails to so specify, or if an Event of Default has occurred and is continuing, Administrative Agent may distribute such payment to the Lenders for application in such manner as it may determine to be appropriate, subject to Section 2.6(1) and any other agreement among Administrative Agent and the Lenders with respect to such application).

(8) **Payments by Borrower.** Except to the extent otherwise provided therein, all payments to be made by Borrower under the Loan Documents shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Administrative Agent at an account designated by Administrative Agent by notice to Lead Borrower, not later than 2:00 p.m., New York City time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(9) **Forwarding of Payments by Administrative Agent.** Except as otherwise agreed by Administrative Agent and the Lenders, each payment received by Administrative Agent under this Agreement or any Note for account of any Lender shall be paid by Administrative Agent promptly to such Lender, in immediately available funds, for account of such Lender's Applicable Lending Office for the Loan or the other obligation in respect of which payment is made.

(10) **Extension to Next Business Day.** If the due date of any payment under this Agreement or any Note would otherwise fall on a day that is not a Business Day, such date

shall be extended to the next succeeding Business Day, and interest shall be payable for any principal so extended for the period of such extension.

Section 2.5 Extension of Maturity Date.

(1) Borrower may, at its option, extend the term for a period of six (6) months to the six month anniversary of the original Maturity Date (the "**First Extension Maturity Date**") and the applicable period being, the "**First Extension Period**"), subject to the satisfaction of the following conditions:

(a) Lead Borrower shall notify (the "**First Extension Notice**") Administrative Agent of Borrower's exercise of such option between forty-five (45) and ninety (90) days prior to the original Maturity Date;

(b) No Event of Default exists and is continuing as of the date of the First Extension Notice, as of the original Maturity Date or would result from the extension of the maturity of the Loans for the First Extension Period;

(c) With respect to the Retail Component, one-hundred percent 100% of the Approved Leases shall be in full force and effect with tenants in Occupancy pursuant to Approved Leases who are not in material default under their respective Approved Lease, and such Approved Leases shall provide for an aggregate fixed minimum rent (as determined in a manner reasonably acceptable to Administrative Agent) of no less than \$5,860,000;

(d) With respect to the Office Component, the Office Component shall be fifty percent (50%) leased with tenants pursuant to Approved Leases who are not in material default under their lease;

(e) At Administrative Agent's request, Borrower shall use commercially reasonable efforts to provide to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under any Approved Lease confirming the term, rent, and other provisions and matters relating to such Approved Leases;

(f) The ratio of (a) the total outstanding principal balance of the Loans to (b) the value of the Project does not exceed 70% based on a new Appraisal obtained by Administrative Agent with a value date as of not more than sixty (60) days prior to the original Maturity Date, such Appraisal to be at Borrower's expense;

(g) Borrower shall have satisfied all of the Project Work Substantial Completion Conditions prior to the Completion Date;

(h) All Government Approvals for the Improvements shall have been received to the extent then applicable, with copies (if applicable) having been delivered to Administrative Agent;

(i) Current financial statements regarding Borrower (dated not earlier than ninety (90) days prior to the First Extension Notice) and all other financial statements and

other information as may be required under this Agreement and the Loan Documents regarding Borrower and the Project shall have been submitted promptly to Administrative Agent;

(j) In the opinion of Administrative Agent, there shall not have occurred any Material Adverse Effect;

(k) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and reasonable legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a default under this Agreement and the Loan Documents;

(l) Not later than the original Maturity Date, (i) the extension shall have been documented to the Lenders' reasonable satisfaction and consented to by Borrower, Administrative Agent and all the Lenders, including the execution and delivery by Guarantor of reaffirmations of their respective obligations under the Guarantor Documents and (ii) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent; and

(m) Borrower shall pay to Administrative Agent (for the benefit of the Lenders in accordance with their Proportionate Shares) on the original Maturity Date a non-refundable extension fee equal to 0.125% of an amount equal to the outstanding principal amount at such time.

(2) Borrower may, at its option, extend the term for a period of six (6) months to the first anniversary of the original Maturity Date (the "**Second Extension Maturity Date**") and the applicable period being, the "**Second Extension Period**"), subject to the satisfaction of the following conditions:

(a) Lead Borrower shall notify (the "**Second Extension Notice**") Administrative Agent of Borrower's exercise of such option between forty-five (45) and ninety (90) days prior to the First Extension Maturity Date;

(b) No Event of Default exists and is continuing as of the date of the Second Extension Notice, as of the First Extension Maturity Date or would result from the extension of the maturity of the Loans for the Second Extension Period;

(c) With respect to the Retail Component, one-hundred percent 100% of the Approved Leases shall be in full force and effect with tenants in Occupancy pursuant to Approved Leases who are not in material default under their respective Approved Lease, and such Approved Leases shall provide for an aggregate fixed minimum rent (as determined in a manner reasonably acceptable to Administrative Agent) of no less than \$5,860,000;

(d) With respect to the Office Component, the Office Component shall be eighty-three percent (83%) leased with tenants pursuant to Approved Leases who are not in material default under their lease;

(e) At Administrative Agent's request, Borrower shall use reasonable commercially reasonable efforts to provide to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under any Approved Lease confirming the term, rent, and other provisions and matters relating to such Approved Leases;

(f) All Government Approvals for the Improvements shall have been received to the extent then applicable, with copies (if applicable) having been delivered to Administrative Agent;

(g) Current financial statements regarding Borrower (dated not earlier than ninety (90) days prior to the Second Extension Notice) and all other financial statements and other information as may be required under this Agreement and the Loan Documents regarding Borrower and the Project shall have been submitted promptly to Administrative Agent;

(h) In the opinion of Administrative Agent, there shall not have occurred any Material Adverse Effect;

(i) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and reasonable legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a default under this Agreement and the Loan Documents;

(j) Not later than the First Extension Maturity Date, (i) the extension shall have been documented to the Lenders' reasonable satisfaction and consented to by Borrower, Administrative Agent and all the Lenders, including the execution and delivery by Guarantor of reaffirmations of their respective obligations under the Guarantor Documents and (ii) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent; and

(k) Borrower shall pay to Administrative Agent (for the benefit of the Lenders in accordance with their Proportionate Shares) on the First Extension Maturity Date a non-refundable extension fee equal to 0.125% of an amount equal to the outstanding principal amount at such time.

(3) Borrower may, at its option, extend the term for a period of six (6) months to the first anniversary of the First Extension Maturity Date (the "**Third Extension Maturity Date**") and the applicable period being, the ("**Third Extension Period**"), subject to the satisfaction of the following conditions:

(a) Lead Borrower shall notify (the "**Third Extension Notice**") Administrative Agent of Borrower's exercise of such option between forty-five (45) and ninety (90) days prior to the Second Extension Maturity Date;

(b) No Event of Default exists and is continuing as of the date of the Third Extension Notice, as of the Second Extension Maturity Date or would result from the extension of the maturity of the Loans for the Third Extension Period;

(c) With respect to the Retail Component, one-hundred percent 100% of the Approved Leases shall be in full force and effect with tenants in Occupancy pursuant to Approved Leases who are not in material default under their respective Approved Lease, and such Approved Leases shall provide for an aggregate fixed minimum rent (as determined in a manner reasonably acceptable to Administrative Agent) of no less than \$5,860,000;

(d) With respect to the Office Component, the Office Component shall be ninety percent (90%) leased with tenants pursuant to Approved Leases who are not in material default under their lease;

(e) At Administrative Agent's request, Borrower shall use commercially reasonable efforts to provide to Administrative Agent, written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under any Approved Lease confirming the term, rent, and other provisions and matters relating to such Approved Leases;

(f) The ratio of (a) the total outstanding principal balance of the Loans to (b) the value of the Project does not exceed 70% based on a new Appraisal obtained by Administrative Agent with a value date as of not more than sixty (60) days prior to the Second Extension Maturity Date, such Appraisal to be at Borrower's expense;

(g) All Government Approvals for the Improvements shall have been received to the extent then applicable, with copies (if applicable) having been delivered to Administrative Agent;

(h) Current financial statements regarding Borrower (dated not earlier than ninety (90) days prior to the Third Extension Notice) and all other financial statements and other information as may be required under this Agreement and the Loan Documents regarding Borrower and the Project shall have been submitted promptly to Administrative Agent;

(i) In the opinion of Administrative Agent, there shall not have occurred any Material Adverse Effect;

(j) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and the Lenders in connection with the proposed extension (pre- and post-closing), including appraisal fees and reasonable legal fees; all such costs and expenses shall be due and payable upon demand, and any failure to pay such amounts shall constitute a default under this Agreement and the Loan Documents;

(k) Not later than the Second Extension Maturity Date, (i) the extension shall have been documented to the Lenders' reasonable satisfaction and consented to by Borrower, Administrative Agent and all the Lenders, including the execution and delivery by Guarantor of reaffirmations of their respective obligations under the Guarantor Documents and

(ii) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent; and

(l) Borrower shall pay to Administrative Agent (for the benefit of the Lenders in accordance with their Proportionate Shares) on the First Extension Maturity Date a non-refundable extension fee equal to 0.125% of an amount equal to the outstanding principal amount at such time.

Any extension pursuant to this Section 2.5 shall be otherwise subject to all of the other terms and provisions of this Agreement, the Building Loan Agreement and the other Loan Documents.

Section 2.6 Pro Rata Treatment of Payments; Etc.

(1) **Pro Rata Treatment.** Except as otherwise provided in Section 2.7(4), Loans shall be allocated pro rata among the Lenders according to the amounts of their respective Commitments (in the case of the making of Loans) or their respective Loans (in the case of Conversions or Continuations of Loans); (c) each payment or prepayment of principal of Loans by Borrower shall be made for account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them (subject, while any Event of Default exists, to the terms of any separate agreement among Administrative Agent and the Lenders); and (d) each payment of interest on Loans by Borrower shall be made for account of the Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders (subject, while any Event of Default exists, to the terms of any separate agreement among Administrative Agent and the Lenders).

(2) **Computations.** Interest on all Loans shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the applicable period.

(3) **Minimum Amounts.** Except for (a) mandatory prepayments made pursuant to Section 2.4(5) and (b) Conversions or prepayments made pursuant to Section 2.7(4), and (c) advances pursuant to Section 4.4, Section 4.5, Section 4.6, and Section 4.11, each borrowing, Conversion, Continuation and partial prepayment of principal (collectively, "**Loan Transactions**") of Loans shall be in an aggregate amount of at least \$1,000,000 and in additional increments of \$100,000 (Loan Transactions of or into Loans of different Types or Interest Periods at the same time hereunder shall each be deemed separate Loan Transactions for purposes of the foregoing). Any Loans or borrowings of less than \$1,000,000 shall be made as Base Rate Loans. Notwithstanding the foregoing, the minimum amount of \$1,000,000 shall not apply to Conversions of lesser amounts into a tranche of Loans that has (or will have upon such Conversion) an aggregate principal amount exceeding \$1,000,000.

(4) **Certain Notices.** Notices by Lead Borrower to Administrative Agent regarding Loan Transactions and the selection of Types of Loans and/or of the duration of Interest Periods shall be irrevocable and shall be effective only if received by Administrative Agent (and, in the case of a Request for Loan Advance, the Construction Consultant) not later

than 3:00 p.m., New York City time, on the number of Business Days prior to the date of the proposed Loan Transaction or the first day of such Interest Period specified below:

Notice	Number of Business Days Prior
Request for Loan Advance	10
Optional Prepayment	3
Conversions into, Continuations as, or borrowings in Base Rate Loans	3
Conversions into, Continuations as, borrowings in or changes in duration of Interest Period for, LIBOR-based Loans (subject to Section 2.4(6))	3

Each Loan Transaction notice shall specify the amount, Type, Interest Period and date of such proposed Loan Transaction, and in the case of a Request for Loan Advance, shall be accompanied by all documentation required by this Agreement as a condition precedent to the applicable Loans. Notices for Conversions and Continuations shall be in the form of Exhibit E. Each such notice specifying the duration of an Interest Period shall specify the portion of the Loans to which such Interest Period is to relate. In the case of a Request for Loan Advance, Administrative Agent shall notify the Lenders of their respective Proportionate Shares of the amount approved by Administrative Agent and the Construction Consultant. If Lead Borrower fails to select (i) the Type of Loan or (ii) the duration of any Interest Period for any LIBOR-based Loan within the required time period and otherwise as provided in this Section 2.6(4), such Loan (if outstanding as a LIBOR-based Loan) will be automatically Continued as an LIBOR-based Loan with an Interest Period of one (1) month (based on a LIBOR-based Rate determined two (2) Business Days prior to the first day of the next Interest Period) or, if outstanding as a Base Rate Loan, will remain as a Base Rate Loan.

(5) **Non Receipt of Funds by Administrative Agent.** Unless Administrative Agent shall have been notified by a Lender or Lead Borrower (in either case, and along with Borrower, the “**Payor**”) prior to the date on which the Payor is to make payment to Administrative Agent of (in the case of a Lender) the proceeds of a Loan to be made by such Lender hereunder or (in the case of Borrower) a payment to Administrative Agent for account of any Lender hereunder (in either case, such payment being herein called the “**Required Payment**”), which notice shall be effective upon receipt, that the Payor does not intend to make the Required Payment to Administrative Agent, Administrative Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient(s) on such date; and, if the Payor has not in fact made the Required Payment to Administrative Agent, the recipient(s) of such payment shall, on demand, repay to Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date (the “**Advance Date**”) such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount at a rate per annum equal to (a) the Federal Funds Rate for such day in the case of payments returned to Administrative Agent by any of the Lenders or (b) the applicable interest rate due hereunder with respect to payments returned by Borrower to Administrative Agent and, if such recipient(s) shall fail promptly to make such

payment, Administrative Agent shall be entitled to recover such amount, on demand, from the Payor, together with interest as aforesaid; provided that if neither the recipient(s) nor the Payor shall return the Required Payment to Administrative Agent within three (3) Business Days of the Advance Date, then, retroactively to the Advance Date, the Payor and the recipient(s) shall each be obligated to pay interest on the Required Payment as follows:

(a) if the Required Payment shall represent a payment to be made by Borrower to the Lenders, Borrower and the recipient(s) shall each be obligated retroactively to the Advance Date to pay interest in respect of the Required Payment at the Default Rate (without duplication of the obligation of Borrower under Section 2.3 to pay interest on the Required Payment at the Default Rate), it being understood that the return by the recipient(s) of the Required Payment to Administrative Agent shall not limit such obligation of Borrower under Section 2.3 to pay interest at the Default Rate in respect of the Required Payment, and

(b) if the Required Payment shall represent proceeds of a Loan to be made by the Lenders to Borrower, the Payor and Borrower shall each be obligated retroactively to the Advance Date to pay interest in respect of the Required Payment pursuant to whichever of the rates specified in Section 2.3 is applicable to the Type of such Loan, it being understood that the return by Borrower of the Required Payment to Administrative Agent shall not limit any claim Borrower may have against the Payor in respect of such Required Payment.

(6) Sharing of Payments, Etc.

(a) **Sharing.** If any Lender shall obtain from Borrower payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any other Loan Document through the exercise (subject, as among the Lenders, to Section 12.25) of any right of set off, banker's lien or counterclaim or similar right or otherwise (other than from Administrative Agent as provided herein), and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loans or such other amounts then due hereunder or thereunder by Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans or such other amounts, respectively, owing to such other Lenders (or in interest due thereon, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such excess payment (net of any expenses that may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of and/or interest on the Loans or such other amounts, respectively, owing to each of the Lenders. To such end all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

(b) **Consent by Borrower.** Borrower agrees that any Lender so purchasing such a participation (or direct interest) may exercise (subject, as among the Lenders, to Section 12.25) all rights of set off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(c) **Rights of Lenders; Bankruptcy.** Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set off to which this Section 2.6(6) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this Section 2.6(6) to share in the benefits of any recovery on such secured claim.

Section 2.7 Yield Protection; Etc.

(1) Increased Costs.

(a) **Increased Costs Generally with Respect to Making or Maintaining LIBOR-based Loans.** If any Change in Law shall:

(A) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the Adjusted Libor Rate);

(B) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any LIBOR-based Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2.7(6) and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(C) impose on any Lender or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender.

and the result of any of the foregoing shall be to increase the cost to such Lenders of making or maintaining any LIBOR-based Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then Borrower will promptly upon demand pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender reasonably determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time Borrower will promptly upon demand pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; provided that such Lender would cause similarly situated Borrowers to compensate them for such an event.

(c) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.7(1) shall be delivered to Lead Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof by Lead Borrower.

(d) **Delays in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender notifies Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

(2) **Limitation on Types of Loans.** Anything herein to the contrary notwithstanding, if, on or prior to the determination of the Libor Rate for any Interest Period:

(a) Administrative Agent reasonably determines that quotations of interest rates for the relevant deposits referred to in the definition of Libor Rate are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR-based Loans; or

(b) the Majority Lenders reasonably determine, and notify Administrative Agent that the relevant rates of interest referred to in the definition of Libor Rate are not likely adequate to cover the cost to such Lenders of making or maintaining LIBOR-based Loans for such Interest Period;

then Administrative Agent shall give Lead Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, the Lenders shall be under no obligation to make additional LIBOR-based Loans, to Continue LIBOR-based Loans or to Convert Loans of any other Type into LIBOR-based Loans, and Borrower shall, on the last day(s) of the then current Interest Period(s) for the outstanding LIBOR-based Loans, either prepay such Loans or such Loans shall be automatically Converted into Base Rate Loans.

(3) **Illegality.** Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its Applicable Lending Office to honor its obligation to make or maintain LIBOR-based Loans hereunder (and, in the sole opinion of such Lender, the designation of a different Applicable Lending Office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly notify Lead Borrower thereof (with a copy to Administrative Agent) and such Lender's obligation to make or Continue, or to Convert Loans of any other Type into, LIBOR-based Loans shall be suspended until such time as such Lender may again make and maintain LIBOR-based Loans.

(4) **Treatment of Affected Loans.** If the obligation of any Lender to make LIBOR-based Loans or to Continue, or to Convert Base Rate Loans into, LIBOR-based Loans shall be suspended pursuant to Section 2.7(1) or Section 2.7(3), such Lender's Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for Loans (or, in the case of a Conversion resulting from a circumstance described in Section 2.7(3), on such earlier date as such Lender may specify to Lead Borrower with a copy to Administrative Agent) and, unless and until such Lender gives notice as provided below that the circumstances specified in Section 2.7(1) or Section 2.7(3) that gave rise to such Conversion no longer exist:

(a) to the extent that such Lender's Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's Loans shall be applied instead to its Base Rate Loans; and

(b) all Loans that would otherwise be made or Continued by such Lender as LIBOR-based Loans shall be made or Continued instead as Base Rate Loans, and all Loans of such Lender that would otherwise be Converted into LIBOR-based Loans shall remain as Base Rate Loans.

If such Lender gives notice to Lead Borrower with a copy to Administrative Agent that the circumstances specified in Section 2.7(1) or Section 2.7(3) that gave rise to the Conversion of such Lender's Loans pursuant to this Section 2.7(4) no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR-based Loans made by other Lenders are outstanding, such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR-based Loans, to the extent necessary so that, after giving effect thereto, all Base Rate Loans and LIBOR-based Loans are allocated among the Lenders ratably (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

(5) **LIBOR Breakage Costs.** Borrower shall upon request pay to Administrative Agent for account of each Lender, such amount or amounts as shall be sufficient (in the reasonable opinion of each Lender) to compensate it for any loss, cost or expense that such Lender determines is attributable to:

(a) any payment, prepayment or Conversion of a LIBOR-based Loan made by such Lender for any reason (including, without limitation, the acceleration of the Loans pursuant to Administrative Agent's or the Lenders' rights referred to in Article 11) on a date other than the last day of the Interest Period for such Loan; or

(b) any failure by Borrower for any reason to borrow a LIBOR-based Loan from such Lender on the date for such borrowing specified in any Request for Loan Advance.

Without limiting the effect of the preceding sentence, such compensation shall include an amount equal to the excess, if any, of (i) the amount of interest that otherwise would have accrued on the principal amount so paid, prepaid, Converted or not borrowed for the period from the date of such payment, prepayment, Conversion or failure to borrow to the last day of the then

current Interest Period for such Loan (or, in the case of a failure to borrow, the Interest Period for such Loan that would have commenced on the date specified for such borrowing) at the applicable rate of interest for such Loan provided for herein over (ii) the amount of interest that otherwise would have accrued on such principal amount at a rate per annum equal to the interest component of the amount such Lender would have bid in the London interbank market for Dollar deposits of leading banks in amounts comparable to such principal amount and with maturities comparable to such period (as reasonably determined by such Lender), or if such Lender shall cease to make such bids, the equivalent rate, as reasonably determined by such Lender, derived from Page 3750 of the Telerate Service or other publicly available source as described in the definition of Libor Rate. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this section shall be delivered to Lead Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(6) Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) **Payment of Other Taxes by Borrowers.** Without limiting the provisions of paragraph (a) above, Borrower shall pay any Other Taxes but not Excluded Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) **Indemnification by Borrower.** Borrower shall indemnify Administrative Agent and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by Administrative Agent or such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Lead Borrower by a Lender, or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) **Evidence of Payments.** As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Borrower to a Governmental Authority, Lead Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such

Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) **Foreign Lenders.** Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the applicable Borrower (with a copy to Administrative Agent), prior to the Initial Advance, Form W-8BEN or Form W-8ECI of the Internal Revenue Service, or such other properly completed and executed forms, certifications, statements or documentation prescribed by applicable law or reasonably requested by such Borrower as will permit such payments to be made without withholding or at a reduced rate. Administrative Agent shall not be obligated to make any payments hereunder to Lenders in respect of the Loan until such Lenders shall have furnished to Administrative Agent the requested form, certification, statement or documentation.

(f) **Refunds.** If Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 2.7(6), it shall pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section 2.7(6) with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that Borrower, upon the request of Administrative Agent or such Lender, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This section shall not be construed to require Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to Borrower or any other Person..

(7) **Replacement of Lenders.** If any Lender requests compensation pursuant to Section 2.7(1) or Section 2.7(6), or any Lender's obligation to Continue Loans of any Type, or to Convert Loans of any Type into the other Type of Loan, shall be suspended pursuant to Section 2.7(2) or Section 2.7(3) (any such Lender requesting such compensation, or whose obligations are so suspended, being herein called a "**Requesting Lender**"), Lead Borrower, upon three (3) Business Days' notice, may require that such Requesting Lender transfer all of its right, title and interest under this Agreement and such Requesting Lender's Note to any bank or other financial institution (a "**Proposed Lender**") identified by Lead Borrower that is satisfactory to Administrative Agent (i) if such Proposed Lender agrees to assume all of the obligations of such Requesting Lender hereunder, and to purchase all of such Requesting Lender's Loans hereunder for consideration equal to the aggregate outstanding principal amount of such Requesting Lender's Loans, together with accrued interest thereon to the date of such purchase and pay all other amounts accrued and payable hereunder to such Requesting Lender as of the date of such transfer (including any fees accrued hereunder and any amounts that would be payable under Section 2.7(1), Section 2.7(5) or Section 2.7(6)). Subject to the provisions of Section 12.23(1), such Proposed Lender shall be a "Lender" for all purposes hereunder. Without prejudice to the

survival of any other agreement of Borrower hereunder, the agreements of Borrower contained in Section 2.7(1) and Section 2.7(6) (without duplication of any payments made to such Requesting Lender by Borrower or the Proposed Lender) shall survive for the benefit of such Requesting Lender under this Section 2.7(7) with respect to the time prior to such replacement.

Section 2.8 Agency Fee. Until payment in full of all obligations under this Agreement and the other Loan Documents, Borrower shall pay to Administrative Agent, for its sole account, the Agency Fee in accordance with the Fee Letter.

Section 2.9 Exit Fee. With respect to any repayment or prepayment of principal under the Loans for any reason whatsoever (whether such repayment or prepayment of the Loans is made voluntarily or involuntarily or as a result of the occurrence of an Event of Default pursuant to which the Administrative Agent has accelerated the obligations of the Borrower under the Loan Documents or otherwise), Borrower shall pay to Administrative Agent, in addition to all other amounts that may be due hereunder, an amount equal to one quarter of one percent (0.25%) of the amount so repaid or prepaid under the Loans (the "**Exit Fee**"). The Exit Fee will be automatically waived in the event that (1) the Loans are prepaid in connection with a bona-fide arms length sale of the Project to a third party which is not an Affiliate of Borrower, or (2) the Loans are paid in full pursuant to a refinancing arrangement with Administrative Agent.

ARTICLE 3

INSURANCE, CONDEMNATION, AND IMPOUNDS

Section 3.1 Insurance.

(1) Borrower shall obtain and maintain, or cause to be maintained, Policies providing at least the following coverages for Borrower and the Project (at all times through the repayment of the Loans in full):

(a) comprehensive all-risk insurance on the Improvements and the personal property, in each case (i) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, (ii) containing an agreed amount endorsement with respect to the improvements and personal property waiving all co insurance provisions; (iii) providing for no deductible in excess of \$50,000; (iv) providing for repairs and alteration coverage; and (v) providing coverage for contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements together with an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Project shall at any time constitute legal non-conforming structures or uses. The Full Replacement Cost shall be redetermined from time to time (but not more frequently than once in any twenty-four (24) calendar months) at the request of Administrative Agent by an appraiser or contractor designated by Borrower and reasonably approved by Administrative Agent, or by an engineer or appraiser in the regular employ of the insurer. The cost of such appraisal shall be paid by Administrative Agent unless an Event of Default shall have occurred and be continuing, in which case such cost shall be paid by Borrower. After the first appraisal, additional appraisals may be based on construction cost

indices customarily employed in the trade. No omission on the part of Administrative Agent to request any such ascertainment shall relieve Borrower of any of its obligations under this Section 3.1(1)(a);

(b) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage (including liabilities as a result of repairs and alterations) occurring upon, in or about the Project, such insurance (i) to be on the so called "occurrence" form with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; (ii) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (iii) to cover at least the following hazards: (A) premises and operations; (B) products and completed operations on an "if any" basis and for a period of not less than five (5) years after the completion of construction of the applicable Improvements; (C) independent contractors; (D) blanket contractual liability for all "insured contracts" as defined in the standard general liability policy; and (E) contractual liability covering the indemnities contained in Sections 5.4, 11.3 and 14.5 hereof, to the extent the same is available and falls within the definition of "insured contracts";

(c) business income/loss of rents insurance (i) with loss payable to Administrative Agent (for the benefit of the Lenders); (ii) covering all risks required to be covered by the insurance provided for in Section 3.1(1)(a) hereof; (iii) in an amount equal to 100% of the projected gross income from the Project (on an actual loss sustained basis) for a period continuing until the Restoration of the Project is completed; the amount of such business income/loss of rents insurance shall be determined prior to the date hereof and at least once each year thereafter based on the greater of (x) Borrower's reasonable estimate of the gross income from the Project, and (y) the highest gross income received during the term of the Notes for any full calendar year prior to the date the amount of such insurance is being determined (or such lesser period as may have expired from the date of substantial completion of the applicable Improvements to the date the amount of such insurance is being determined), in each case for the succeeding eighteen (18) month period and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the improvements and the personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twenty-four (24) months from the date that the Project, is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. All insurance proceeds payable to Administrative Agent (for the benefit of the Lenders) pursuant to this Section 3.1(1)(c) shall be held by Administrative Agent and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Notes and this Agreement; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Notes and this Agreement except to the extent such amounts are actually paid out of the proceeds of such business income/loss of rents insurance;

(d) when required by Administrative Agent or at the discretion of Borrower, at all times prior to the completion of construction of the Improvements, the insurance provided for in Section 3.1(1)(a) shall be written in a so called builder's risk completed value form (i) on a non reporting basis, (ii) against all risks insured against pursuant to Section

3.1(1)(a), (iii) shall include permission to occupy the Project, and (4) shall contain an agreed amount endorsement waiving co-insurance provisions, and shall also include coverage for:

(A) loss suffered with respect to materials, equipment, machinery, and supplies whether on-site, in transit, or stored off-site and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property;

(B) Soft Costs, plans, specifications, blueprints and models in connection with any restoration following a casualty;

(C) demolition and increased cost of construction, including, without limitation, increased costs arising out of changes in Applicable Law and codes;

(D) operation of building laws;

(E) collapse, transit and testing; and

(F) delayed opening coverage on an actual loss sustained basis with extended period of indemnity endorsement consistent with Section 3.1(1)(c).

(e) workers' compensation insurance, as required by any Governmental Authority or legal requirement, subject to the statutory limits of the state of New York;

(f) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Administrative Agent on terms consistent with the commercial property insurance policy required under Section 3.1(1)(a);

(g) if any portion of the Improvements is at any time located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law (the "**Flood Insurance Acts**"), flood hazard insurance in an amount not less than the greater of (A) the maximum limit of coverage available with respect to the Project, under Policies issued pursuant to the Flood Insurance Acts, subject only to customary deductibles under such Policies, and (B) the maximum limit of coverage available with respect to the Project, under Policies issued by private insurance carriers;

(h) earthquake insurance (based on probable maximum loss) in amounts and in form and substance satisfactory to Administrative Agent, provided that the insurance pursuant to this Section 3.1(1)(h) hereof shall be on terms consistent with the all risk insurance policy required under Section 3.1(1)(a) hereof;

(i) umbrella liability insurance in an amount not less than \$100,000,000 per occurrence on terms consistent with the commercial general liability insurance policy required under Section 3.1(1)(b) hereof;

(j) insurance with respect to the Construction Manager, the Major Contractors, Borrower's Architect and other Design Professionals as specified in Schedule 3.1(1)(j) attached hereto;

(k) secured creditor's environmental insurance, insuring against unknown environmental hazards and conditions in amounts and in form and substance satisfactory to Administrative Agent, which shall name the Administrative Agent as a loss payee or additional insured, as applicable; and

(l) such other insurance and in such amounts as Administrative Agent from time to time may request against such other insurable hazards which at the time are available on commercially reasonable terms for properties located in or around the region where the Project is located and are customarily required by institutional lenders with respect to projects similar to the Project.

(2) All insurance provided in compliance with Section 3.1(1)(a) hereof shall be obtained under valid and enforceable policies (the "**Policies**" or in the singular, the "**Policy**"), in such forms and, from time to time after the date hereof, in such amounts as may be satisfactory to Administrative Agent, issued by financially sound and responsible insurance companies permitted to do business in the state of New York and reasonably approved by Administrative Agent. The insurance companies must have a claims paying ability/financial strength rating of "AX" (or its equivalent) or better by A.M. Best. No Policy shall contain an exclusion from coverage under such Policy for loss or damage incurred as a result of an act of terrorism or similar acts of sabotage, provided that Borrower may obtain separate Terrorism Insurance coverage subject to and in accordance with the terms of this Section 3.1(2). Borrower will be required to maintain insurance against terrorism, terrorist acts or similar acts of sabotage ("**Terrorism Insurance**") with coverage amounts of not less than an amount equal to the full replacement cost of the improvements and the personal property (the "**Terrorism Insurance Required Amount**"). Notwithstanding the foregoing sentence, Borrower shall not be obligated to expend in any fiscal year on Insurance Premiums for Terrorism Insurance more than two (2.0) times the then-current annual premium paid by Borrower for the comprehensive all-risk insurance required under subsection 3.1(1)(a) hereof (the "**Terrorism Insurance Cap**") and if the cost of the Terrorism Insurance Required Amount exceeds the Terrorism Insurance Cap, Borrower shall purchase the maximum amount of Terrorism Insurance available with funds equal to the Terrorism Insurance Cap; provided, however, the Terrorism Insurance Cap shall not apply or restrict the amount of terrorism coverage required to be obtained and maintained by this subsection (x) with respect to the Project if (a) owners and/or operators of mixed-use retail/office buildings in the same class as the Project in Bronx, New York are generally obtaining terrorism insurance, (b) lenders financing such mixed-use retail/office properties in the same class as the Project in Bronx, New York are generally requiring terrorism insurance as a condition of financing, or (c) Borrower or Sponsor or any Affiliate of Borrower or Sponsor, is obtaining terrorism insurance on any other properties in Bronx, New York of which any of the foregoing Persons own or operate. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Section 3.1(1) hereof, Lead Borrower shall deliver to Administrative Agent insurance certificates showing payment of all premiums (the "**Insurance Premiums**") for such Policies, which certificates shall be in form and substance reasonably satisfactory to Administrative Agent. Within sixty (60) days following the expiration

dates of the Policies, Lead Borrower shall deliver to Administrative Agent certified copies of such Policies marked “premium paid” or accompanied by evidence satisfactory to Administrative Agent of payment of the Insurance Premiums.

(3) Borrower shall not obtain (a) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Administrative Agent and Lenders’ interest is included therein as provided in this Agreement, or (b) separate insurance concurrent in form or contributing in the event of loss with that required in Section 3.1(1) to be furnished by, or which may be required to be furnished by, Borrower. In the event Borrower obtains separate insurance or an umbrella or a blanket policy, Lead Borrower shall notify Administrative Agent of the same and shall cause certified copies of each Policy to be delivered as required in Section 3.1(1).

(4) All Policies provided for or contemplated by Section 3.1(1) hereof, except for the Policy referenced in Section 3.1(1)(e), shall name Administrative Agent (for the benefit of the Lenders) as additional insured under liability policies and as mortgagee/loss payee under property policies, as their respective interests may appear, and in the case of property, boiler and machinery, and flood insurance, shall contain a so called New York standard non-contributing mortgagee clause in favor of Administrative Agent providing that the loss thereunder shall be payable to Administrative Agent in accordance with the terms of this Agreement.

(5) All Policies provided for in Section 3.1(1)(a) hereof shall contain clauses or endorsements to the effect that:

(a) no willful act or negligence of Borrower, or anyone acting for Borrower, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Administrative Agent is concerned;

(b) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or cancelled without at least thirty (30) days’ written notice (or ten (10) days’ written notice, in the case of non payment of premium) to Administrative Agent and any other party named therein as an insured;

(c) each Policy shall provide that the issuers thereof shall give written notice to Administrative Agent if the Policy has not been renewed fifteen (15) days prior to its expiration; and

(d) Administrative Agent shall not be liable for any insurance premiums thereon or subject to any assessments thereunder.

(6) If at any time Administrative Agent is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Administrative Agent shall have the right, on five (5) Business Days’ notice to Lead Borrower to take such action as Administrative Agent deems necessary to protect its interest in the Project, including, without limitation, the obtaining of such insurance coverage as Administrative Agent in its sole and absolute discretion deems appropriate, and all expenses incurred by Administrative Agent in connection with such action or in obtaining such insurance and keeping it in effect shall be paid

by Borrower to Administrative Agent upon demand and until paid shall be secured by the Security Documents and shall bear interest at the Default Rate.

(7) In the event of a foreclosure of the Mortgages, or other transfer of title to Project in extinguishment in whole or in part of the Loans, all right, title and interest of Borrower in and to the Policies then in force and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lenders or other transferee in the event of such other transfer of title.

(8) Lead Borrower shall give immediate written notice of any loss in excess of \$100,000 to the insurance carrier and to Administrative Agent. In connection with losses in excess of \$100,000, but less than or equal to \$2,000,000, Borrower and Administrative Agent shall cooperate in all matters related to the loss including, without limitation, making proof of loss, adjusting and compromising any claim under the insurance policies, appearing in and prosecuting any action arising from such insurance policies, and collecting and receiving insurance proceeds. In connection with losses in excess of \$2,000,000, Borrower hereby irrevocably authorizes and empowers Administrative Agent, as attorney in fact for Borrower coupled with an interest, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Administrative Agent's expenses incurred in the collection of such proceeds. Nothing contained in this Section 3.1(8), however, shall require Administrative Agent or any Lender to incur any expense or take any action hereunder.

Section 3.2 Condemnation Awards. Lead Borrower shall immediately notify Administrative Agent of the institution of any proceeding for the condemnation or other taking of the Project or any portion thereof. Administrative Agent may participate in any such proceeding and Lead Borrower will deliver to Administrative Agent all instruments necessary or required by Administrative Agent to permit such participation. Without Administrative Agent's prior consent (subject to the approval of the Majority Lenders), Borrower (1) shall not agree to any compensation or award, and (2) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Project or any part thereof are hereby assigned to and shall be paid to Administrative Agent. Borrower authorizes Administrative Agent to collect and receive such awards and compensation, to give proper receipts and acquittances therefor, and in Administrative Agent's sole discretion (which Administrative Agent shall exercise at the direction of the Majority Lenders) to apply the same toward the payment of the Loans, notwithstanding that the Loans may not then be due and payable, or to the restoration of the Project; provided, however, if the award is less than or equal to the Threshold Amount and Borrower requests that such proceeds be used for non structural site improvements (such as landscape, driveway, walkway and parking area repairs) required to be made as a result of such condemnation, Administrative Agent will apply the award to such restoration in accordance with the terms applicable to insurance proceeds set forth in Section 3.3. Borrower, upon request by Administrative Agent, shall execute all instruments requested to confirm the assignment of the awards and compensation to Administrative Agent, free and clear of all liens, charges or encumbrances.

Section 3.3 Use and Application of Insurance Proceeds. Administrative Agent shall apply insurance proceeds to costs of restoring the Project or the Loans as follows:

(1) if the loss is less than or equal to the Threshold Amount, Administrative Agent shall promptly apply the insurance proceeds to restoration provided (a) no Event of Default exists, and (b) Borrower promptly commences and is diligently pursuing restoration of the Project;

(2) if the loss exceeds the Threshold Amount but is not more than ten percent (10%) of the replacement value of the Improvements (for projects containing multiple phases or stand alone structures, such calculation to be based on the damaged phase or structure, not the project as a whole), Administrative Agent shall apply the insurance proceeds to restoration provided that at all times during such restoration (a) no Event of Default exists; (b) Administrative Agent determines that there are sufficient funds including Borrower's equity available to restore and repair the Project to a condition reasonably approved by Administrative Agent; (c) Administrative Agent reasonably determines that any operating deficits, including all debt service, which will be incurred with respect to the Project following any such loss and until the restoration has been completed, will be covered out of (A) the insurance proceeds, (B) the proceeds of business interruption insurance, if applicable, (C) Net Operating Income of the Project or (D) by other funds of Borrower; (d) Administrative Agent reasonably determines that all Major Leases will remain in effect after restoration is complete; (e) Administrative Agent determines that restoration and repair of the Project to a condition reasonably approved by Administrative Agent will be completed prior to the Completion Date; (f) Borrower promptly commences and is diligently pursuing restoration of the Project; and (g) if still applicable, Administrative Agent shall have unilaterally determined that the Guaranty of Completion shall remain in full force and effect during the period of restoration, or Guarantor shall have executed and delivered to Administrative Agent a guaranty of completion with respect to all restoration in substantially the same form as the Guaranty of Completion and otherwise reasonably satisfactory to Administrative Agent;

(3) if the conditions set forth above are not satisfied or the loss exceeds the maximum amount specified in Section 3.3(2) above, Administrative Agent may in its sole discretion (subject to the approval of the Majority Lenders) apply any insurance proceeds it may receive to the payment of the Loans or allow all or a portion of such proceeds to be used for the restoration of the Project.

Section 3.4 Disbursement of Proceeds.

(1) The insurance proceeds shall be held by Administrative Agent in a Controlled Account and shall constitute additional security for the Loans. Upon receipt of evidence reasonably satisfactory to Administrative Agent that all the conditions precedent, including those set forth in Section 3.3(2) above, have been satisfied, the insurance proceeds shall be disbursed by Administrative Agent to, or as directed by, Lead Borrower from time to time during the course of the restoration in accordance with the applicable provisions of Article 4 and Schedule 4 of this Agreement and (to the extent such disbursements are related to construction costs) the Building Loan Agreement.

(2) All plans and specifications required in connection with the restoration shall be subject to prior review and reasonable approval by Administrative Agent and by an independent consulting engineer selected by Administrative Agent (the "**Restoration Consultant**"); provided, however, that if the plans and specifications are consistent with those attached to the Building Loan Agreement, Administrative Agent shall be deemed to have approved such plans and specifications. Administrative Agent shall have the non-exclusive use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the restoration. The identity of the contractors, subcontractors and materialmen engaged in the restoration, as well as all Major Contracts, shall be subject to prior review and reasonable approval by Administrative Agent and the Restoration Consultant. All reasonable costs and expenses incurred by Administrative Agent in connection with making the insurance proceeds available for the restoration including reasonable counsel fees and disbursements and the Restoration Consultant's fees, shall be paid by Borrower. Borrower shall also obtain, at its sole cost and expense, all necessary government approvals as and when required in connection with such restoration and provide copies thereof to Administrative Agent and Restoration Consultant.

(3) In no event shall Administrative Agent be obligated to make disbursements of the insurance proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the restoration, as certified by the Restoration Consultant, minus the Retainage. Administrative Agent shall establish, maintain and release any Retainage in accordance with the terms of the Building Loan Agreement.

(4) Administrative Agent shall not be obligated to make disbursements of the insurance proceeds more frequently than once per month.

(5) If at any time the insurance proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Administrative Agent in consultation with the Restoration Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Restoration Consultant to be incurred in connection with the completion of the restoration, Borrower shall deposit the deficiency (the "**Insurance Proceeds Deficiency**") with, or deliver a Collateral Letter of Credit in the amount of such deficiency to, Administrative Agent within ten (10) Business Days of Administrative Agent's request and before any further disbursement of the insurance proceeds shall be made. The Insurance Proceeds Deficiency shall be held in a Controlled Account and shall be disbursed for costs actually incurred in connection with the restoration on the same conditions applicable to the disbursement of the insurance proceeds, and, until so disbursed, shall constitute additional security for the Loans.

(6) After the Restoration Consultant certifies to Administrative Agent that a restoration has been substantially completed in accordance with the provisions of this Section 3.4, and the receipt by Administrative Agent of evidence satisfactory to Administrative Agent that all costs incurred in connection with the restoration have been paid in full, the excess, if any, of the insurance proceeds and the remaining balance, if any, of the Insurance Proceeds Deficiency deposited with Administrative Agent shall, so long as no Potential Default or Event of Default has occurred, be paid to Lead Borrower. If a Potential Default or Event of Default has occurred, the remaining balance of the Insurance Proceeds Deficiency shall be applied to repayment of the Loans.

(7) All insurance proceeds not required (i) to be made available for the restoration or (ii) to be returned to Lead Borrower as excess insurance proceeds pursuant to subsection (6) above may (A) be retained and applied by Administrative Agent toward the payment of the Loans, whether or not then due and payable, in such order, priority and proportions as Administrative Agent in its sole discretion shall deem proper, or, (B) at the sole discretion of Administrative Agent, the same may be paid, either in whole or in part, to Lead Borrower for such purposes and upon such conditions as Administrative Agent shall designate.

(8) Notwithstanding any casualty, Borrower shall continue to make payments with respect to the outstanding principal amount in the manner provided in the Notes, this Agreement and the other Loan Documents and the outstanding principal amount shall not be reduced unless and until (i) any insurance proceeds or condemnation award shall have been actually received by Administrative Agent, (ii) Administrative Agent shall have deducted its reasonable expenses of collecting such proceeds and (iii) Administrative Agent shall have applied any portion of the balance thereof to the repayment of the outstanding principal amount in accordance with Section 4.3. The Lenders shall not be limited to the interest paid on any condemnation award but shall continue to be entitled to receive interest as provided in Article 2.

ARTICLE 4

DISBURSEMENTS OF THE LOANS

Section 4.1 General Conditions.

(1) Subject to (a) Borrower's satisfaction of the applicable conditions precedent set forth in Schedule 4 and (b) Borrower's compliance with the applicable provisions of this Article 4, the Lenders shall disburse the proceeds of the Acquisition Loan on the Closing Date and the proceeds of each other Loan within ten (10) Business Days after Administrative Agent's receipt of all of the documents and items to be delivered or received pursuant to Schedule 4 and this Article 4; provided, however, that at no time shall the Lenders be obligated to:

(i) advance to Lead Borrower more than the amount that Borrower has funded from its own monies or an existing loan or is then required to fund to the party seeking payment or, in the case of reimbursement, to the party seeking reimbursement (subject to Retainage, if applicable),

(ii) make an advance if the Loans are not In Balance in accordance with Section 4.3,

(iii) subject to possible reallocation in accordance with Section 4.5, advance proceeds of a Loan in an amount in excess of the Budget Line Items set forth in the Budget, as the same may be adjusted in accordance with the terms of this Agreement, or

(iv) make any Loans to the extent any Operating Revenues have not been applied in accordance with Section 4.6(1).

(2) Notwithstanding anything to the contrary contained in this Agreement, the Lenders shall have no obligation to advance any Loan unless Administrative Agent is, at all times, satisfied that the Improvements can be constructed Lien free, substantially in accordance with the Plans and Specifications (or the Tenant Improvement Plans in the case of Tenant Improvement Work) for the sums set forth in the Budget (or, if more, Borrower has furnished the difference in cash or cash equivalents, subject to the provisions of [Section 4.3](#), [Section 4.4](#) and [Section 4.5](#)), by the Completion Date or, with respect to Tenant Improvement Work, such date as shall be required for the completion of the applicable Tenant Improvement Work under an Approved Lease. Administrative Agent will endeavor to give notice to Lead Borrower of its intention not to authorize disbursement of any Loan proceeds based on the foregoing, but neither the Lenders nor Administrative Agent shall have any liability hereunder should Administrative Agent fail to do so, and no failure by Administrative Agent to give such notice shall affect Administrative Agent's or any Lender's rights under this [subsection \(2\)](#). Notwithstanding anything herein to the contrary, if such applicable conditions precedent are not satisfied for the full required disbursement, then, to the extent that the amounts in any Request for Loan Advance are broken down such that Administrative Agent is satisfied that all of the above conditions are met with respect to a portion of any Loan advance, the Lenders shall advance such portion of the requested Loan advance.

Section 4.2 Procedure for Making Disbursements of Loan Proceeds.

(1) After the Closing Date, disbursements shall be made from time to time as construction progresses pursuant to a request for advance in the applicable form attached hereto as Exhibit F (each, a "**Request for Loan Advance**"), but no more frequently than once in each calendar month.

(2) Each Request for Loan Advance with respect to Loans shall (a) be duly executed by an Authorized Officer on behalf of Lead Borrower, (b) be submitted to Administrative Agent and the Construction Consultant not less than ten (10) Business Days prior to the proposed disbursement date for such Loans, (c) specify the items to be paid or reimbursed with the proceeds of the requested Loans, (d) include the documentation required to be included therewith under [Schedule 4](#) and (e) be in the minimum amounts required under [Section 2.6\(3\)](#).

(3) All advances of the Loans shall be made for the payment of Project Costs in accordance with the Budget upon Borrower's satisfaction of the applicable conditions set forth in this [Article 4](#) and [Schedule 4 — Parts A and B](#), as applicable.

(4) In the event Lead Borrower does not request a disbursement within thirty (30) days after the previous disbursement of a Loan, Borrower shall nonetheless within such thirty (30) day period and during each subsequent thirty (30) day period in which Lead Borrower does not request a disbursement of the Loan, satisfy the conditions precedent to disbursements set forth in this Agreement.

Section 4.3 Loan Balancing.

(1) Borrower represents that the Budget sets forth all anticipated costs to be incurred by Borrower in connection with the ownership, development, construction, financing,

marketing, maintenance and leasing of the Improvements, from time to time through the Maturity Date as extended pursuant to Section 2.5 hereof. Borrower further agrees as follows:

(a) Subject to reallocations pursuant to Section 4.4 and Section 4.5, if at any time, the projected costs anticipated to be incurred for any item of Construction Work or for the ownership, development, financing, marketing, maintenance or leasing of the Improvements through the Maturity Date exceed the amount set forth in the Budget for such item (as the same may be adjusted in accordance with the terms of this Agreement), as determined by Administrative Agent and the Construction Consultant in their reasonable discretion (including any such determination that the undisbursed Loan proceeds allocated for the payment of future interest (the "**Interest Reserve**") is insufficient) based on factors, including, but not limited to, (1) Administrative Agent's projections of interest rates for period(s) up to and including the full remaining term of the Loan (and permitted extensions); (2) the effect of any Hedge Agreement; (3) cost overruns or Change Orders; or (4) failure of the Improvements to lease at the rate of absorption or otherwise at rates and terms projected by Borrower, then the Loans shall be deemed not "In Balance."

(b) If the Loans are deemed not "In Balance," then Borrower shall, at Administrative Agent's option, within ten (10) Business Days after written notice from Administrative Agent either (a) deposit with Administrative Agent an amount sufficient to cover such deficiency (a "**Deficiency Deposit**"), which Deficiency Deposit shall be deposited with Administrative Agent in the Controlled Account (the "**Deficiency Deposit Account**"), (b) make one or more equity contributions to be used by Borrower to pay costs that will bring the Loans In Balance (an "**Equity Balancing Contribution**"), or (c) deliver a Collateral Letter of Credit in an amount such that the available proceeds thereunder would be sufficient to bring the Loans In Balance and upon which Administrative Agent shall be entitled to draw in compliance with the provisions set forth below in this Section 4.3. Administrative Agent shall not be required to authorize any disbursement of any Loans before receiving (i) payment of any such Deficiency Deposit into the Deficiency Deposit Account and the prior application of such Deficiency Deposit to the payment of Project Costs so as to bring the Loans In Balance, (ii) verification that an Equity Balancing Contribution has been made and the proceeds thereof used for the payment of Project Costs on account of the Improvements, so as to bring the Loans In Balance or (iii) a Collateral Letter of Credit as set forth above. Failure of Borrower to provide satisfactory verification of an Equity Balancing Contribution or deliver a Deficiency Letter of Credit as required above shall be deemed Borrower's election to make a Deficiency Deposit. The Deficiency Deposit shall be allocated to the Project Loan Budget and the Budget, as applicable, and shall be applied to the payment of Project Costs on account of the Improvements prior to any further disbursement of the Loans.

(c) The balances of the applicable Contingency Fund from time to time shall not be considered for purposes of determining whether the Loans are In Balance.

(2) If an Event of Default shall occur and be continuing, Administrative Agent (subject to the provisions of Section 14.3) may, at its option, in addition to exercising any other rights or remedies available under the Loan Documents, (A) apply any unexpended Deficiency Deposit to (or draw on any Collateral Letter of Credit to pay) the costs of completion of the Improvements and/or (B) apply any unexpended Deficiency Deposit to (or draw on any

Collateral Letter of Credit for application of the sums drawn thereunder to) the immediate reduction of any amounts due under the Notes and the other Loan Documents. With respect to any Collateral Letter of Credit that Borrower may furnish or cause to be furnished to Administrative Agent in accordance with the terms of this Section 4.3:

(a) Administrative Agent will be entitled, among other things, to make one or more draws pursuant to and in accordance with this Agreement or the Building Loan Agreement, as applicable, by presentment thereof to the issuing bank accompanied only by Administrative Agent's clean sight-draft, it being intended that the issuing bank shall have no right to inquire as to Administrative Agent's right to draw upon such Collateral Letter of Credit;

(b) Administrative Agent shall be entitled, among other things, to draw upon each Collateral Letter of Credit pursuant to this Agreement or the Building Loan Agreement, as applicable, in whole, or in part from time to time, to the extent (without taking into account the Collateral Letter of Credit) the Loan is not In Balance, (i) in order to pay any costs not covered by Loan proceeds, Equity Balancing Contributions or Deficiency Deposits or (ii) upon any Event of Default; and

(c) Administrative Agent shall have the right to draw upon any Collateral Letter of Credit within ten (10) Business Days prior to the expiration date of such Collateral Letter of Credit and each renewal and extension thereof unless, prior to such expiration date of such Collateral Letter of Credit and each renewal and extension thereof, Borrower shall have furnished a replacement, extension or renewal Collateral Letter of Credit, acceptable to Administrative Agent, it being the intent hereof that at no time shall the unexpired term of any Collateral Letter of Credit be less than ten (10) Business Days. If Administrative Agent draws upon a Collateral Letter of Credit pursuant to the terms hereof, then Administrative Agent shall hold the proceeds thereof in a Controlled Account as a Deficiency Deposit. Administrative Agent shall also be entitled to draw upon a Collateral Letter of Credit if the credit rating of the issuing bank no longer meets the standard required of a Collateral Letter of Credit and Borrower does not deliver to Administrative Agent a replacement letter of credit that otherwise conforms to the requirements for Deficiency Letters of Credit within ten (10) days following notice of the same from Administrative Agent, or if Administrative Agent reasonably believes that its rights to draw on such Collateral Letter of Credit are in imminent jeopardy of not being honored.

Section 4.4 Budget Contingencies. The Budget contains line items designated for contingency for Hard Costs and Soft Costs (collectively, the "**Contingency Fund**") which represent amounts necessary to provide reasonable assurances to Administrative Agent and the Lenders that funds are available within the Budget if additional costs, expenses and/or delays are incurred or additional interest accrues on the Loans, or other unanticipated events or problems occur. Upon request of Lead Borrower, Administrative Agent may, in its reasonable discretion, re-allocate a portion of the Contingency Fund to cover cost overruns, cost of change orders, additional interests and other anticipated costs based upon the percentage of completion of the Construction Work (e.g. (and as an example only) fifty percent (50%) of the Contingency Fund may be allocated when the project is fifty percent (50%) complete). Any such re-allocation shall reduce, by the amount of such re-allocation, the amount of the Contingency Fund available to be allocated thereafter. Subject to the foregoing, Borrower agrees that the decisions with respect to

utilizing any portion of the Contingency Fund shall be made by Administrative Agent in its reasonable discretion and that the Loans may not be In Balance, and Borrower may be required to make a Deficiency Deposit or Equity Balancing Contribution, even if funds remain in the Contingency Fund.

Section 4.5 Budget Line Items. The Budget includes as line items (collectively, “**Budget Line Items**”) the cost of all labor, materials, equipment, fixtures and furnishings needed for the completion of all Construction Work, and all other costs, fees and expenses relating in any way whatsoever to the Construction Work and the operation of the Project. Borrower agrees that all Loans shall be used only for the Budget Line Items for which such Loans are made (as re-allocated from time to time in accordance with the terms of this Agreement). Borrower agrees that, while an Event of Default exists, Administrative Agent may, at any time and from time to time without prior written notice to Lead Borrower or Borrower, authorize the disbursement of the Budget Line Items for the purposes for which they have been set aside, or for any other purposes related to the Construction Work or otherwise provided for in the Budget as Administrative Agent may determine, either by payment of such items or by reimbursement to Borrower for payments actually made by Borrower for such items. Administrative Agent shall not be obligated to authorize the disbursement of any amount for any category of costs set forth as a Budget Line Item which is greater than the amount set forth for such category in the applicable Budget Line Item; provided, however, that subject to Administrative Agent’s prior reasonable consent, Borrower may apply savings from one Budget Line Item to cost overruns in another Budget Line Item or to the Contingency Fund, or to any other unbudgeted Project Cost provided (a) there are no Potential Defaults or Events of Defaults existing, (b) all costs to be paid out of the Budget Line Item from which funds are being re-allocated have been paid or sufficient sums remain in said line item to pay such costs when the same become due, (c) said savings are actual savings and are documented or otherwise established to the satisfaction of Administrative Agent and the Construction Consultant in their reasonable discretion, (d) such reallocation will not violate the provisions of the Lien Law or affect the priority of the Mortgages on the Project and (e) Administrative Agent, at Borrower’s sole cost and expense, obtains endorsements to the Title Policies insuring against “any statutory lien for services, labor or materials furnished or contracted for prior to the date hereof *i.e.*, the date of such endorsement (or any statutory lien for services, labor or materials furnished after the date hereof, the priority of which lien relates back to services, labor or materials furnished or contracted for prior to the date hereof), and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy,” as a result of the reallocation of such Budget Line Item; provided, however, the Borrower shall not reallocate any portion of the Soft Costs Budget Line Items which have been allocated to the payment of real estate taxes and the interest reserve.

Section 4.6 Interest; Fees; and Expenses.

(1) Included in the Budget are projected amounts for (a) interest on the Loans, (b) the Agency Fee, (c) the fees and expenses of the Construction Consultant, Administrative Agent’s counsel and the Title Company and (d) the fees and expenses related to the recording of the Mortgages. Subject to Borrower’s compliance with all of the conditions set forth in Schedule 4 and this Article 4, Lead Borrower may in any Request for Loan Advance request advances for the purpose of paying the aforesaid items due at such time, in which event Administrative Agent

shall be authorized and is hereby directed to disburse the amount thereof to the Persons entitled to such payments. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, Lead Borrower shall not have the right to request the advance of any Loans for any items covered by clauses (a) through (d) above to the extent Operating Revenues are available to pay such items.

(2) Borrower hereby authorizes Administrative Agent to disburse the proceeds of any Loan to pay (a) interest accrued on the Notes, (b) the Agency Fees, (c) the fees and expenses of the Construction Consultant, Administrative Agent's counsel and the Title Company, (d) any expenses payable in accordance with Section 9.28, and (e) any Date Down Endorsements, notwithstanding that Lead Borrower may not have requested a disbursement of such amounts.

(3) Subject to the provisions of Section 14.3, Administrative Agent in its sole and absolute discretion may (but shall not be obligated to do so) direct the Lenders to make such Loans for disbursements authorized under this Section 4.6 notwithstanding that the Loans are not In Balance or that a Potential Default or Event of Default exists under the terms of this Agreement or any other Loan Document. Such disbursements shall constitute a Loan and be added to the principal balance of the Notes, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable, and no further direction, authorization or Request for Loan Advance from Lead Borrower is necessary for the Lenders to make such disbursements. Nothing contained in this Section 4.6 shall require Administrative Agent to direct the Lenders to make Loans for payment of any of the items set forth in subsection (2) above if the other conditions set forth in this Agreement for Loans are not satisfied.

Section 4.7 Reserved.

Section 4.8 Tenant Improvement Allowances.

(1) Loans shall be made to Borrower in connection with Tenant Improvement Allowances as the same shall be payable pursuant to Approved Leases.

(2) The first request for disbursement for any Tenant Improvement Allowance shall be accompanied by the following, all of which shall be subject to the reasonable approval of the Administrative Agent to the extent Borrower has any outstanding (i.e. unexpired) approval rights with respect thereto pursuant to the terms of the applicable Approved Lease (any such approval or disapproval to be made by the Administrative Agent within a reasonably sufficient time for Borrower to comply with any time limits set forth in the applicable Approved Lease for Borrower's response):

(a) documentation required to be delivered by the applicable tenant pursuant to its respective Approved Lease;

(b) if not already delivered to the Administrative Agent, a fully executed lease (already approved by the Administrative Agent) covering such leased space; and

(c) all matters set forth in subsection (3) below.

(3) The Administrative Agent's obligation to make disbursements of any Loans for Tenant Improvement Allowances shall be subject to the further condition precedent that all of the following requirements shall have been completed to the reasonable satisfaction of the Administrative Agent to the extent Borrower has any outstanding (i.e. unexpired) approval rights with respect thereto pursuant to the terms of the applicable Approved Lease (any such approval or disapproval to be made by the Administrative Agent within a reasonably sufficient time for Borrower to comply with any time limits set forth in the applicable Approved Lease for Borrower's response):

(a) Borrower shall have promptly furnished to the Administrative Agent and the Construction Consultant all documents and other information relating to such Tenant Improvement Allowance which Borrower is entitled to receive pursuant to and in accordance with the applicable Approved Lease;

(b) Loans shall be made for Tenant Improvement Allowances only to the extent the applicable tenant is then entitled to receive payments related to such Tenant Improvement Allowance pursuant to the terms of its applicable Approved Lease;

(c) no mechanic's liens shall have been filed against the Project in connection with the work being performed under the applicable Approved Lease; and

(d) Borrower shall have complied with all the other applicable conditions precedent to a disbursement of a Loan contained in Section 2.1.

(4) The obligation of the Lenders to make the final Loan to Borrower for a Tenant Improvement Allowance for any Approved Lease is subject to the further condition precedent that all of the following requirements shall have been completed to the reasonable satisfaction of the Administrative Agent (in the case of clause (b) below, to the extent Borrower has any approval rights with respect thereto pursuant to the terms of the applicable Approved Lease, any such approval or disapproval to be made by the Administrative Agent within a reasonably sufficient time (but in no event less than ten (10) Business Days) to enable Borrower to comply with applicable time limits set forth in the applicable Approved Lease for Borrower's response):

(a) The applicable work covered by a Tenant Improvement Allowance has been substantially completed, subject to Punch List Items, free of mechanics' liens unless such liens shall be bonded or otherwise removed of record or the Title Company shall have provided affirmative coverage in accordance with Schedule 4 — Part A, paragraph 10;

(b) Borrower shall have promptly furnished to the Administrative Agent and the Construction Consultant all documents and other information relating to the final advance of the applicable Tenant Improvement Allowance which Borrower is entitled to receive in accordance with the applicable Lease; and

(c) All of the applicable conditions precedent to any Loan contained in Section 2.1 shall have been satisfied.

Section 4.9 Direct Loan Advances by Administrative Agent. The Lenders shall, at the option of Administrative Agent, advance all or any part of any particular Loan either (1) to Lead Borrower for disbursement in accordance with a Request for Loan Advance, (2) while any Event of Default exists, directly to the Construction Manager, a Major Contractor, other contractor, subcontractor, material supplier or other party any costs payable to such party, (3) after an Event of Default, at Borrower's expense, to the Title Company which shall pay said monies to the parties as so instructed by Administrative Agent or (4) as contemplated by Section 1.01(d) of the Completion Guaranty (whether the applicable work is being performed by Guarantor or Administrative Agent). The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization to the Lenders to make such direct advances provided for in clauses (2), (3) and (4) above and no further authorization from Borrower shall be necessary to warrant such direct advances, and all such direct advances shall be secured by the Security Documents as fully as if made directly to Borrower, regardless of the disposition thereof by any party so paid. After an Event of Default, at Administrative Agent's request, any advance of Loan proceeds made by and through the Title Company may be made pursuant to a construction escrow agreement reasonably approved by Administrative Agent. Borrower agrees to join as a party to such escrow agreement and to comply with the requirements set forth therein (which shall be in addition to and not in substitution for the requirements contained in this Agreement) and to pay the fees and expenses of the Title Company charged in connection with the performance of its duties under such construction escrow agreement.

Section 4.10 No Waiver or Approval by Reason of Loan Advances. The making of any Loans by the Lenders shall not be deemed an acceptance or approval by Administrative Agent or the Lenders (for the benefit of Borrower or any third party) of the Construction Work or other work theretofore done or constructed or to the Lenders' obligations to make further Loans, nor, in the event Borrower is unable to satisfy any condition, shall any such failure to insist upon strict compliance have the effect of precluding Administrative Agent or the Lenders from thereafter declaring such inability to be an Event of Default as herein provided. Administrative Agent's and/or the Lenders' waiver of, or failure to enforce, any conditions to or requirements associated with any Loans in any one or more circumstances shall not constitute or imply a waiver of such conditions or requirements in any other circumstances.

Section 4.11 Authorization to Make Loan Advances to Cure Borrower's Defaults. If an Event of Default shall occur, Administrative Agent (subject to the provisions of Section 14.3) may (but shall not be required to) perform any of such covenants and agreements with respect to which Borrower is in Event of Default. Any amounts expended by Administrative Agent in so doing and any amounts expended by Administrative Agent in connection therewith shall constitute a Loan and be added to the outstanding principal balance of the Loans, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable, and no prior notice to or further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

Section 4.12 Designation of Lead Borrower as Agent for Borrower.

(1) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's agent to obtain loans and advances under the Loan, the proceeds of which shall be available to each Borrower as set forth herein. As the disclosed principal for its

agent, each Borrower shall be obligated to the Agent and the Lenders on account of loans and advances so made under the Loan as if made directly by the Lenders to that Borrower, notwithstanding the manner by which such loans and advances are recorded on the books and records of the Lead Borrower and/or of any Borrower (including, without limitation, on account of any such treatment of said loan or advance as an equity investment in a Borrower by Lead Borrower).

(2) Each Borrower recognizes that credit available to it under the Loan is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower, jointly and severally, hereby assumes and agrees fully, faithfully, and punctually to discharge all obligations of all of the Borrowers under the Loan Documents.

(3) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a loan or other advance under the Loan.

(4) The proceeds of each loan and advance provided under the Loan which is requested by the Lead Borrower shall be deposited into an account in the name of the Lead Borrower or as otherwise indicated by the Lead Borrower. The Lead Borrower shall cause the transfer of the proceeds thereof to the Borrower(s) on whose behalf such loan and advance was obtained. Neither the Agent nor any Lender shall have any obligation to see to the application of such proceeds.

(5) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's attorney-in-fact to act in the Borrower's name and stead and to do and perform all matters, to grant to the Agent for the benefit of the Lenders a security interest in the Collateral, transact all business, and make, execute and acknowledge all Loan Documents and other instruments relating to this Agreement including but not limited to, this Agreement, the Note, and the Security Documents. The Borrowers hereby acknowledge and agree that the power of attorney created hereby is coupled with an interest.

Section 4.13 Administrative Agent's Right to Make Loan Advances in Compliance with the Guaranty of Completion. Any Loan proceeds disbursed by Administrative Agent as contemplated by Section 1.01(b) of the Guaranty of Completion (whether the applicable work is being performed by Guarantor or Administrative Agent) shall constitute a Loan and be added to the outstanding principal balance of the Loans, and the Lenders shall make the applicable Loans to fund any such disbursements. The authorization hereby granted is irrevocable and no prior notice to or further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

Section 4.14 No Third-Party Benefit. This Agreement is solely for the benefit of the Lenders, Administrative Agent, Lead Borrower and Borrower. All conditions of the obligations of the Lenders to make advances hereunder are imposed solely and exclusively for the benefit of the Lenders and may be freely waived or modified in whole or in part by the Lenders at any time if in their sole discretion they deem it advisable to do so, and no Person other than Lead

Borrower or Borrower (provided, however, that all conditions have been satisfied) shall have standing to require the Lenders to make any Loan advances or shall be a beneficiary of this Agreement or any advances to be made hereunder.

ARTICLE 5

ENVIRONMENTAL MATTERS

Section 5.1 Certain Definitions. As used herein, the following terms have the meanings indicated:

(1) “**Environmental Claim**” means, with respect to any Person, any written request for information by a governmental authority, or any written notice, notification, claim, administrative, regulatory or judicial action, suit, judgment, demand or other written communication by any Person or governmental authority alleging or asserting liability with respect to Borrower or the Project, whether for damages, contribution, indemnification, cost recovery, compensation, injunctive relief, investigatory, response, remediation, damages to natural resources, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, use or release into the environment of any Hazardous Materials originating at or from, or otherwise affecting, the Project, (ii) any fact, circumstance, condition or occurrence forming the basis of any violation, or alleged violation, of any Environmental Law by Borrower or otherwise affecting the health, safety or environmental condition of the Project or (iii) any alleged injury or threat of injury to the environment by Borrower or otherwise affecting the Project.

(2) “**Environmental Laws**” means any federal, state or local law (whether imposed by statute, or administrative or judicial order, or common law), now or hereafter enacted and applicable to the Project, governing health, safety, industrial hygiene, the environment or natural resources, or Hazardous Materials, including, such laws governing or regulating the use, generation, storage, removal, recovery, treatment, handling, transport, disposal, control, discharge of, or exposure to, Hazardous Materials.

(3) “**Environmental Liens**” has the meaning assigned to such term in Section 5.3(4).

(4) “**Environmental Losses**” means any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liabilities (including, but not limited to, strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of remediation (whether or not performed voluntarily), amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, reasonable attorneys’ fees and expenses, engineers’ fees, environmental consultants’ fees, and investigation costs (including, but not limited to, costs for sampling, testing and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards relating to Hazardous Materials, Environmental Claims, Environmental Liens and violation of Environmental Laws.

(5) "**Hazardous Materials**" means (a) petroleum or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by product thereof, (b) asbestos or asbestos containing materials, (c) polychlorinated biphenyls (PCBs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead-based paint, (h) Mold, or (i) any other substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws.

(6) "**Mold**" means any microbial or fungus contamination or infestation in any Project of a type that could reasonably be anticipated (after due inquiry and investigation) to pose a risk to human health or the environment or could reasonably be anticipated (after due inquiry and investigation) to negatively impact the value of the affected Property in any material respect.

Section 5.2 Representations and Warranties on Environmental Matters. Borrower represents and warrants to Administrative Agent and the Lenders that, to Borrower's knowledge, except as set forth in the Site Assessment, (1) no Hazardous Material is now or was formerly used, stored, generated, manufactured, installed, treated, discharged, disposed of or otherwise present at or about the Project or any property adjacent to the Project (except for cleaning and other products currently used in connection with the routine maintenance or repair of the Project and de minimus quantities used by tenants in the normal course of business in full compliance with Environmental Laws), (2) all permits, licenses, approvals and filings required by Environmental Laws have been obtained, and the use, operation and condition of the Project do not, and did not previously, violate any Environmental Laws, (3) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought or been threatened, nor have any settlements been reached by or with any parties or any Liens imposed in connection with the Project concerning Hazardous Materials or Environmental Laws and (4) no underground storage tanks exist at the Project.

Section 5.3 Covenants on Environmental Matters.

(1) Borrower shall (a) comply strictly and in all respects with applicable Environmental Laws; (b) notify Administrative Agent immediately upon Borrower's discovery of any spill, discharge, release or presence of any Hazardous Material at, upon, under, within, contiguous to or otherwise affecting the Project; (c) promptly remove such Hazardous Materials and remediate the Project in full compliance with Environmental Laws and as reasonably recommended to preserve the value and/or use of the Project, in accordance with the reasonable recommendations and specifications of an independent environmental consultant approved by Administrative Agent; and (d) promptly forward to Administrative Agent copies of all orders, notices, permits, applications or other communications and reports in connection with any spill, discharge, release or the presence of any Hazardous Material or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect the Project or Borrower.

(2) Borrower shall not cause, shall prohibit any other Person within the control of Borrower from causing, and shall use prudent, commercially reasonable efforts to

prohibit other Persons(including tenants) from causing (a) any spill, discharge or release, or the use, storage, generation, manufacture, installation, or disposal, of any Hazardous Materials at, upon, under, within or about the Project or the transportation of any Hazardous Materials to or from the Project (except for cleaning and other products used in connection with the routine maintenance or repair of the Project in full compliance with Environmental Laws), (b) any underground storage tanks to be installed at the Project, or (c) any activity that requires a permit or other authorization under Environmental Laws to be conducted at the Project.

(3) Lead Borrower shall provide to Administrative Agent, at Borrower's expense promptly upon the written request of Administrative Agent from time to time, a Site Assessment or, if required by Administrative Agent, an update to any existing Site Assessment, to assess the presence or absence of any Hazardous Materials and the potential costs in connection with abatement, cleanup or removal of any Hazardous Materials found on, under, at or within the Project. Borrower shall pay the cost of no more than one such Site Assessment or update in any twelve (12) month period, unless Administrative Agent's request for a Site Assessment is based on a reasonable suspicion of Hazardous Materials at or near the Project, a breach of representations under Section 5.2, or an Event of Default, in which case any such Site Assessment or update shall be at Borrower's expense.

(4) **Environmental Notices.** Lead Borrower shall promptly provide notice to Administrative Agent of:

(a) all Environmental Claims asserted or threatened against Borrower or any other party occupying the Project or any portion thereof or against the Project which become known to Borrower;

(b) the discovery by Borrower of any occurrence or condition on the Project or on any real property adjoining or in the vicinity of the Project which could reasonably be expected to lead to an Environmental Claim against Borrower, Administrative Agent or any of the Lenders;

(c) the commencement or completion of any environmental remediation at the Project; and

(d) any Lien or other encumbrance imposed pursuant to any Environmental Law ("**Environmental Liens**").

In connection therewith, Lead Borrower shall transmit to Administrative Agent copies of any citations, orders, notices or other written communications received from any Person and any notices, reports or other written communications submitted to any governmental authority with respect to the matters described above.

Section 5.4 Allocation of Risks and Indemnity. As between Borrower, Administrative Agent and the Lenders, all risk of loss associated with non-compliance with Environmental Laws, or with the presence of any Hazardous Material at, upon, within, contiguous to or otherwise affecting the Project, shall lie solely with Borrower. Accordingly, Borrower shall bear all risks and costs associated with any Environmental Loss, damage or liability therefrom, including all costs of removal of Hazardous Materials or other remediation

required hereunder or by law. Borrower shall indemnify, defend and hold Administrative Agent and the Lenders harmless from and against all loss, liabilities, damages, claims, costs and expenses (including reasonable costs of defense) arising out of or associated, in any way, with the non-compliance with Environmental Laws, or the existence of Hazardous Materials in, on, or about the Project, or a breach of any representation, warranty or covenant contained in this Article 5, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent and the Lenders; provided, however, Borrower shall not be liable under such indemnification to the extent such loss, liability, damage, claim, cost or expense results solely from Administrative Agent's or any Lender's gross negligence or willful misconduct. Borrower's obligations under this Section 5.4 shall arise upon the discovery of the presence of any Hazardous Material, whether or not any governmental authority has taken or threatened any action in connection with the presence of any Hazardous Material, and whether or not the existence of any such Hazardous Material or potential liability on account thereof is disclosed in the Site Assessment and shall continue notwithstanding the repayment of the Loans or any transfer or sale of any right, title and interest in the Project (by foreclosure, deed in lieu of foreclosure or otherwise).

Section 5.5 No Waiver. Notwithstanding any provision in this Article 5 or elsewhere in the Loan Documents, or any rights or remedies granted by the Loan Documents, Administrative Agent and the Lenders do not waive and expressly reserve all rights and benefits now or hereafter accruing to Administrative Agent and/or any Lenders under the "security interest" or "secured creditor" exception under applicable Environmental Laws, as the same may be amended. No action taken by Administrative Agent and/or any Lender pursuant to the Loan Documents shall be deemed or construed to be a waiver or relinquishment of any such rights or benefits under the "security interest exception."

ARTICLE 6

LEASING MATTERS

Section 6.1 Representations and Warranties on Leases. Borrower represents and warrants to Administrative Agent and the Lenders with respect to leases of the Project that: (1) to Borrower's knowledge, the rent roll delivered to Administrative Agent is true and correct, and the leases are valid and in full force and effect; (2) the leases (including amendments) are in writing, and there are no oral agreements with respect thereto; (3) the copies of the leases delivered to Administrative Agent are true and complete; (4) to Borrower's knowledge, neither the landlord nor any tenant is in default under any of the leases; (5) Borrower has no knowledge of any notice of termination or default with respect to any lease; (6) Borrower has not assigned or pledged any of the leases, the rents or any interests therein except to Administrative Agent (on behalf of the Lenders); (7) no tenant or other party has an option to purchase all or any portion of the Project; (8) no tenant has the right to terminate its lease prior to expiration of the stated term of such lease except in the case of a casualty or condemnation of the Project to the extent permitted pursuant to the terms and conditions of such lease; and (9) no tenant has prepaid more than one month's rent in advance (except for bona fide security deposits not in excess of an amount equal to two month's rent). To the extent that any part of the Land is located in the State of New York, reference is hereby made to Section 291-f of the Real Property Law of the State of

New York for purposes of obtaining for Administrative Agent and the Lender the benefits of said Section in connection herewith.

Section 6.2 Standard Lease Form; Approval Rights. All leases and other rental arrangements shall in all respects be approved by Administrative Agent and shall be on a standard lease form for the Office Component, approved by Administrative Agent with no material modifications (except as approved by Administrative Agent in writing). Such lease form shall provide (a) that the lease is subordinate to the Mortgages, (b) that the tenant shall attorn to Administrative Agent (on behalf of the Lenders) following an Event of Default and (c) that any cancellation, surrender, or amendment of such lease without the prior written consent of Administrative Agent shall be voidable by Administrative Agent. Borrower shall hold, in trust, all tenant security deposits in a segregated account, and, to the extent required by Applicable Law, shall not commingle any such funds with any other funds of Borrower. Within ten (10) days after Administrative Agent's request, Borrower shall furnish to Administrative Agent a statement of all tenant security deposits, and copies of all leases not previously delivered to Administrative Agent, certified by Borrower as being true and correct. Notwithstanding anything contained in the Loan Documents, Administrative Agent's approval shall not be required for future leases or lease extensions if the following conditions are satisfied: (1) there exists no Potential Default or Event of Default; (2) the lease is on the standard lease form approved by Administrative Agent with no modifications except for commercially reasonable changes agreed to in the ordinary course of Borrower's business, but in any event there shall be no modifications to the subordination, attornment, estoppel and landlord liability clause without the prior written consent of Administrative Agent; (3) the lease does not conflict with any restrictive covenant affecting the Project or any other lease for space in the Project; (4) the lease is not a Major Lease; (5) the lease shall provide for rental rates and landlord concessions comparable to existing local market rates as shall be established pursuant to the Leasing Guidelines; (6) the lease is with a third party not an Affiliate of Borrower, Sponsor or Guarantor; (7) the lease shall not contain any options for renewal or expansion by the tenant at rental rates which are below reasonable comparable market levels at the time the lease is executed; (8) the lease shall be to a tenant which Borrower, in its professional and commercially reasonable judgment, has determined is creditworthy and (9) the lease is for a term of not more than ten (10) years (exclusive of renewal options which, together with the initial lease term shall not exceed fifteen (15) years).

Section 6.3 Covenants. Borrower (1) shall perform the obligations which Borrower is required to perform under the leases, including the performance of any Tenant Improvement Work with respect thereto; (2) shall enforce the obligations to be performed by the tenants; (3) shall promptly furnish to Administrative Agent any notice of default or termination received by Borrower from any tenant, and any notice of default or termination given by Borrower to any tenant; (4) shall not collect any rents for more than thirty (30) days in advance of the time when the same shall become due, except for bona fide security deposits not in excess of an amount equal to two month's rent; (5) shall not enter into any ground lease or master lease of any part of the Project; (6) shall not further assign or encumber any lease; (7) shall not, except with Administrative Agent's prior written consent, cancel or accept surrender or termination of any Major Lease; (8) shall not, except with Administrative Agent's prior written consent, modify or amend any Major Lease (except for minor modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not

affecting the economic terms of the lease); (9) shall use its best efforts to lease the Improvements; and (10) shall not, with respect to the Best Buy Lease, select or change the “Outside Delivery Date” (as defined in such lease) without the prior written consent of Administrative Agent, and any action in violation of clauses (5), (6), (7), and (8) of this Section 6.3 shall be void at the election of Administrative Agent.

Section 6.4 Tenant Estoppels. At Administrative Agent’s request, Borrower shall, within thirty (30) days, obtain and furnish to Administrative Agent, (1) written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under leases in the Project and confirming the term, rent, and other provisions and matters relating to the leases and (2) written subordination and attornment agreements, in form and substance satisfactory to Administrative Agent, executed by tenants under leases in the Project, whereby, among other things, such tenants subordinate their interest in the Project to the Loan Documents and agree to attorn to Administrative Agent (on behalf of the Lenders) and its successors and assigns upon foreclosure or other transfer of the Project after an Event of Default.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and the Lenders that:

Section 7.1 Organization and Power. Borrower and each Borrower Party is duly organized, validly existing and in good standing under the laws of the state of its formation or existence, and is in compliance with legal requirements applicable to doing business in the State. Borrower is not a “foreign person” within the meaning of § 1445(f)(3) of the Internal Revenue Code. Lead Borrower’s U.S. taxpayer identification number is 20-1577239 and Fordham Office’s U.S. taxpayer identification number is 26-1094416.

Section 7.2 Validity of Loan Documents. The execution, delivery and performance by Borrower and each Borrower Party of the Loan Documents: (1) are duly authorized and do not require the consent or approval of any other party or governmental authority which has not been obtained; and (2) will not violate any law or result in the imposition of any Lien upon the assets of any such party, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid and binding obligations of Borrower and each Borrower Party, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors’ rights.

Section 7.3 Liabilities; Litigation.

(1) The financial statements delivered by Borrower and each Borrower Party are true and correct with no material change since the date of preparation. Except as disclosed in such financial statements, there are no liabilities (fixed or contingent) affecting the Project, Borrower or any Borrower Party. Except as disclosed in such financial statements, there is no litigation, administrative proceeding, investigation or other legal action (including any proceeding under any state or federal bankruptcy or insolvency law) pending or, to the

knowledge of Borrower, threatened, against the Project, Borrower or any Borrower Party which if adversely determined could have a Material Adverse Effect.

(2) Neither Borrower nor any Borrower Party is contemplating either the filing of a petition by it under state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of its assets or property, and neither Borrower nor any Borrower Party has knowledge of any Person contemplating the filing of any such petition against it.

Section 7.4 Taxes and Assessments. The Project is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot. There are no pending or, to Borrower's best knowledge, proposed, special or other assessments for public improvements or otherwise affecting the Project, nor are there any contemplated improvements to the Project (other than the Construction Work) that may result in such special or other assessments.

Section 7.5 Other Agreements; Defaults. Neither Borrower nor any Borrower Party is a party to or in violation of any agreement or instrument or subject to any court order, injunction, permit, or restriction which might have a Material Adverse Effect.

Section 7.6 Compliance with Law; Government Approvals.

(1) Borrower and the Project, as applicable, and the contemplated use thereof and operations thereat, comply, and upon completion of construction of the Construction Work shall comply, with all Applicable Law, except where the failure so to comply could not reasonably be expected to have a Material Adverse Effect.

(2) All Government Approvals necessary in connection with the construction and operation of the Project as contemplated by the Loan Documents and the Project Documents, are set forth in Schedule 7.6 attached hereto (the "**Permitting Schedule**") and, other than those Government Approvals to be obtained after the date hereof as expressly identified in the Permitting Schedule, have been duly obtained, were validly issued, are in full force and effect, are not subject to appeal, are held in the name of Borrower (in the case of the Project, are held in the name of Borrower (in the case of the Project)), are free from conditions or requirements, the compliance with which could reasonably be expected to have a Material Adverse Effect or which Borrower does not reasonably expect will be able to be satisfied in the ordinary course of business, and are assignable to and assumable by the successors in interest and transferees of Borrower and run with the land.

(3) There is no proceeding pending or, to Borrower's Knowledge, threatened that seeks, or may reasonably be expected, to rescind, terminate, modify or suspend any such Government Approval.

(4) The information set forth in each application and other written material submitted by Borrower and, to Borrower's Knowledge, to the applicable Governmental Authority in connection with each such Government Approval is accurate and complete in all material respects.

(5) The Government Approvals expressly described on the Permitting Schedule as those to be obtained after the date hereof are required solely in connection with later stages of development, construction or operation of the Improvements. Borrower has no reason to believe that any Government Approval that has not yet been obtained by Borrower, but which will be required in the future, will not be granted in due course, on or prior to the date when required and free from any condition or requirement which Borrower does not reasonably expect will be able to be satisfied in the ordinary course of business.

(6) The Project (if constructed in accordance with the Plans and Specifications and the Project Documents) will conform to and comply with all covenants, conditions, restrictions and reservations in the Government Approvals and all Applicable Law, except where the failure so to comply could not reasonably be expected to have a Material Adverse Effect.

(7) Borrower has no reason to believe that Administrative Agent, acting for the benefit of the Lenders, will not be entitled, to the benefit of each Government Approval set forth on the Permitting Schedule hereto with respect to the Project upon the exercise of remedies under the Security Documents.

(8) Borrower has delivered to Administrative Agent a true and complete copy of each Government Approval heretofore obtained with respect to the Project as indicated on the Permitting Schedule, as the same shall be supplemented during the course of obtaining additional Government Approvals as the Construction Work proceeds.

Section 7.7 Location of Borrower. Borrower's principal place of business and chief executive offices are located at the address stated in [Section 12.1](#).

Section 7.8 ERISA. Borrower has no employees and has not established any pension plan for employees which would cause Borrower to be subject to the Employee Retirement Income Security Act of 1974, as amended.

Section 7.9 Margin Stock. No part of proceeds of the Loans will be used for purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

Section 7.10 Tax Filings. Borrower and each Borrower Party have filed (or have obtained effective extensions for filing) all federal, state and local tax returns required to be filed and have paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower and each Borrower Party, respectively.

Section 7.11 Solvency. Giving effect to the Loans, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loans, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loans, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its Debts as such Debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loans will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Debts and

liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Debts as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

Section 7.12 Full and Accurate Disclosure. No statement of fact made by or on behalf of Borrower or any Borrower Party in this Agreement or in any of the other Loan Documents or in any certificate, statement or questionnaire delivered by Borrower or any Borrower Party in connection with the Loans contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Borrower or any Borrower Party which has not been disclosed to Administrative Agent which might have a Material Adverse Effect.

Section 7.13 Single Purpose Entity. Borrower is and has at all times since its formation been a Single Purpose Entity.

Section 7.14 Property Management Agreement; Construction Management Agreement; Development Agreement.

(1) The Property Management Agreement is the only property management agreement in existence with respect to the operation or management of the Project. The copy of the Property Management Agreement delivered to Administrative Agent is a true and correct copy, and such agreement has not been modified. Neither party to such agreement is in default under such agreement and the Property Manager has no defense, offset right or other right to withhold performance under or terminate such agreement.

(2) The Construction Management Agreement is the only Construction Management Agreement in existence with respect to the construction management of the Project. The copy of the Construction Management Agreement delivered to Administrative Agent is a true and correct copy, and such agreement has not been modified. Neither party to such agreement is in default under such agreement and the Construction Manager has no defense, offset right or other right to withhold performance under or terminate such agreement.

(3) There is no development agreement with respect to the Project.

Section 7.15 No Conflicts.

(1) The execution, delivery and performance of the Loan Documents, and the Project Documents by Borrower do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, operating agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any Applicable Law or Government Approval applicable to Borrower or the Project.

(2) Each Government Approval required for and each consent or approval required to be obtained from, and notice required to be delivered to, any other Person in

connection with the execution, delivery and performance by Borrower of this Agreement, the other Loan Documents, and the Project Documents has been obtained or delivered and is in full force and effect.

Section 7.16 Title. Borrower has good, marketable and insurable fee simple title to the Project, free and clear of all Liens, except for the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. The Mortgages create (and upon the recordation thereof and of any related financing statements there will be perfected) (1) a valid Lien on the Project, subject only to Permitted Encumbrances and (2) security interests in and to, and collateral assignments of, all personalty (including the leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. There are no claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

Section 7.17 Use of Project. The Project, upon completion of the construction of the Improvements, will be used exclusively for retail, office and other ancillary uses permitted by applicable zoning law, and for no other purpose or purposes.

Section 7.18 Flood Zone. No portion of the Project or the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1994, as amended, or any successor law.

Section 7.19 Insurance. Borrower has obtained and has delivered to Administrative Agent certified copies of all of the insurance policies for the Project reflecting the insurance coverages, amounts and other insurance requirements set forth in this Agreement. No claims have been made under any such policy, and no Person, including Borrower, has done, by act or omission, anything which would impair the coverage of any such policy.

Section 7.20 Condemnation. No condemnation has been commenced or, to Borrower's knowledge, is contemplated with respect to all or any portion of the Project or for the relocation of roadways providing access to the Project.

Section 7.21 Utilities; Access. The Project has adequate rights of access to public ways and is or will, following completion of the Improvements, be served by adequate electric, gas, water, sewer, sanitary sewer and storm drain facilities. All public utilities necessary to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting such project, there exists sufficient capacity to support the Project and all such utilities are or will, following the completion of the Improvements, be connected so as to serve such project without passing over other property, except to the extent such other property is subject to a perpetual easement for such utility benefiting such project. All roads necessary for the full utilization of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for on-site and off-site infrastructure improvements to be developed pursuant to the Government Approvals by Borrower for the Project, there are no amenities, services or facilities (including those for access,

parking, recreational activities and otherwise) not located or to be constructed upon the Project, pursuant to the applicable Project Documents, which are necessary to the use or enjoyment, or intended to benefit the owner or occupants, thereof.

Section 7.22 Boundaries. Except as shown on the Survey all of the improvements to be developed in connection with the Project lie wholly within the boundaries and building restriction lines of such project, and no improvements on adjoining properties encroach upon the Project.

Section 7.23 Separate Lots. The Project is comprised of one (1) or more parcels which constitutes one (1) or more separate tax lots and does not constitute a portion of any other tax lot not a part of the Project.

Section 7.24 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable legal requirements currently in effect in connection with the transfer of the Project to Borrower or any transfer of a controlling interest in Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgages, have been paid and, the Mortgages are enforceable in accordance with its terms by Administrative Agent or any subsequent holder thereof (on behalf of the Lenders), subject to applicable bankruptcy, insolvency, or similar laws generally affecting the enforcement of creditors' rights.

Section 7.25 Investment Company Act. Borrower is not (1) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (2) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

Section 7.26 Foreign Assets Control Regulations, Etc. Neither the execution and delivery of the Notes and the other Loan Documents by Borrower Parties nor the use of the proceeds of the Loans, will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), Executive Order No. 13,224,66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or any enabling legislation or executive order relating to any of the same. No Borrower Party nor any of their respective subsidiaries or Affiliates is a Prohibited Person.

Section 7.27 Organizational Structure.

(1) Borrower has heretofore delivered to Administrative Agent a true and complete copy of the Organizational Documents of each Borrower Party.

(2) Schedule 7.27 contains a true and accurate chart reflecting the ownership of all of the direct and indirect equity interests in Borrower and each Borrower Party, including the percentage of ownership interest of the Persons shown thereon.

Section 7.28 Project Documents. Borrower has heretofore delivered to Administrative Agent a true and complete copy of each Project Document and, subject to the terms of Section 9.7 of the Building Loan Agreement, none of the Project Documents has been further modified. The Project Documents are in full force and effect and Borrower is not in default under or with respect to any Project Document. To the best of Borrower's knowledge, no other party to a Project Document is in default under any material covenant or obligation set forth therein.

Section 7.29 Budget. The amounts and allocations set forth in the Budget (including the Project Costs), as it may be amended in accordance with the terms of this Agreement, present a full, complete and good faith representation of all costs, expenses and fees anticipated to be required to acquire and develop the Project, complete the Construction Work, and pay interest on the Loans, the carrying and operating costs for the Project, costs in connection with the leasing of premises within the Project.

Section 7.30 Interim Disbursements. All Loans, if any, disbursed prior to the date hereof by Administrative Agent to Lead Borrower have been applied to the respective items listed in the respective Request for Loan Advance, except that in the case of any disputed items, such Loans have been applied to other Budget Line Items with Administrative Agent's prior approval or repaid to Administrative Agent (on behalf of the Lenders).

Section 7.31 Reserved.

Section 7.32 Tenant Improvement Allowances. Schedule 7.32 attached hereto sets forth a true and complete summary of all Tenant Improvement Allowances currently provided for in the Leases; provided that Schedule 7.32 shall be subject to update as Approved Leases are executed and/or amended in accordance with the terms hereof and as plans for Tenant Improvement Allowances are further developed pursuant to Approved Leases.

Section 7.33 Reserved.

ARTICLE 8

FINANCIAL REPORTING

Section 8.1 Financial Statements.

(1) **Monthly Reports.** During the period commencing on the Closing Date and ending upon the satisfaction of the Project Work Substantial Completion Conditions, as soon as available and in any event within fifteen (15) Business Days after the end of each calendar month occurring during such period, a certificate of an authorized officer of Lead Borrower, in form and substance reasonably satisfactory to Administrative Agent, setting forth in reasonable detail (a) Borrower's total sources of funds and uses thereof during such month (specifically identifying any uses of contingency funds permitted to be advanced by Administrative Agent), (b) the aggregate amounts paid during such month to the Construction Manager and/or subcontractors and any unpaid amounts owing to the Construction Manager and/or subcontractors which are sixty (60) days past their due date, (c) variations from the Construction Schedule, including, without limitation, the estimated Completion Date, and the reasons therefor, (d) if the amounts paid to the Construction Manager and/or subcontractors during such month are

at variance from the amounts scheduled to be paid pursuant to the applicable Request for Loan Advance, the reasons for such variance, (e) any Liens placed on the Project and their payment status, (f) the status of construction generally and of the Government Approvals necessary for the construction and operation of the Project; and (g) copies of Lien Waivers and any other reports as may reasonably be requested by Administrative Agent.

(2) **Quarterly Reports.** Within sixty (60) days after the end of each calendar quarter (except for the fourth quarter ending on December 31), Lead Borrower shall furnish to Administrative Agent (a) on and after the satisfaction the Project Work Substantial Completion Conditions, quarterly operating statements for the Project for the most recent fiscal quarter, (b) a current rent roll for the Project, (c) on and after the Occupancy of the first tenant in the Project for operation of its business, a statement of all rent arrearages as of the last day of such fiscal quarter, (d) a leasing status report, (e) quarterly financial statements (including a balance sheet, income statement and cash flow statement) for Borrower, Guarantor and the Managing Member prepared in accordance with GAAP (and including all appropriate and customary notes), and (f) a certificate executed by the chief financial officer of Borrower or the Managing Member of Borrower stating that each such quarterly statement presents fairly the financial condition and the results of operations of Borrower and the Project and has been prepared in accordance with general accepted accounting principles.

(3) **Annual Reports.** Within one hundred twenty (120) days after the end of each calendar year, Lead Borrower will furnish to Administrative Agent a complete copy of Borrower's annual financial statements prepared in accordance with GAAP and otherwise in form and detail reasonably acceptable to Administrative Agent, for such calendar year which financial statements shall contain (x) a balance sheet and (y) on and after the Occupancy of the first tenant in the Project, a detailed operating statement for each of Borrower and the Project. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior calendar year, and (ii) a certificate executed by the chief financial officer of Borrower or the Managing Member of Borrower (in the case of the Borrower financial statements) stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Project and has been prepared in accordance with general accepted accounting principles. Together with Borrower's annual financial information to be delivered pursuant to this Section 8.1(3), copies, certified by an Authorized Officer of Borrower to be true and correct, for each annual period prior to the Completion Date, the annual audited financial statement of the Construction Manager, in each case prepared in accordance with GAAP, and together with the opinion of the independent certified public accountant of the Construction Manager, which opinion is not qualified as to the scope of the audit or as to the status of the Construction Manager.

(4) **Additional Reports.** Upon completion of the Improvements and if the Maturity Date is extended pursuant to Section 2.5, Lead Borrower shall deliver to Administrative Agent as soon as reasonably available, but in no event later than thirty (30) days after such items become available to Borrower in final form a summary report containing each of the following with respect to the Project for the most recently completed calendar year: (A) aggregate sales by tenants under leases or other occupants of the Project, both on an actual (or to the extent such information is not provided by tenants, Property Manager's or Borrower's best estimate) and on

a comparable store basis, (B) rent per square foot payable by each tenant and (C) aggregate Occupancy of the Project by anchor space and in-line store space as of December 31.

Section 8.2 Accounting Principles. All financial statements shall be prepared in accordance with sound accounting principles applicable to commercial real estate, consistently applied from year to year. If the financial statements are prepared on an accrual basis, such statements shall be accompanied by a reconciliation to cash basis accounting principles.

Section 8.3 Other Information. Lead Borrower shall deliver to Administrative Agent such additional information regarding Borrower, its subsidiaries, its business, any Borrower Party, and the Project within thirty (30) days after Administrative Agent's request therefor.

Section 8.4 Audits. Administrative Agent shall have the right to choose and appoint a certified public accountant to perform financial audits as it deems necessary, at Borrower's expense. Borrower shall permit Administrative Agent to examine such records, books and papers of Borrower which reflect upon its financial condition and the income and expense relative to the Project.

ARTICLE 9

COVENANTS

Borrower covenants and agrees with Administrative Agent and the Lenders as follows:

Section 9.1 Due on Sale and Encumbrance; Transfers of Interests. Without the prior written consent of Administrative Agent and the Lenders (to the extent required under Section 12.2),

(1) Borrower shall not allow any Change of Control to occur;

(2) neither Borrower nor any other Person having an ownership or beneficial interest in Borrower shall (a) allow, directly or indirectly, any Transfer (other than a Permitted Transfer), to occur; or (b) further encumber, alienate, grant a Lien or grant any other interest in the Project or any part thereof (including any partnership, membership or other ownership interest in Borrower), whether voluntarily or involuntarily; and

(3) Borrower shall not assign any of its rights or obligations hereunder or under the Loan Documents.

As used in this Section 9.1, "Transfer" shall include the sale, transfer, conveyance, mortgage, pledge, or assignment of the legal or beneficial ownership of (a) the Project (including, following the establishment of a condominium regime with respect to the Project, any Unit), (b) any partnership interest in any general partner in Borrower that is a partnership, (c) any membership interest in any member in Borrower that is a limited liability company and (d) any voting stock in any managing member in Borrower that is a corporation; "Transfer" shall not include (i) the leasing of any space within the Project so long as Borrower complies with the provisions of the Loan Documents relating to such leasing activity; or (ii) the transfers of non-managing membership interests in Borrower so long as no Change of Control results therefrom.

Section 9.2 Maintenance of the Project; Alterations.

(1) Upon the completion of construction of the Project, Borrower shall:

(a) maintain or cause to be maintained the Improvements with the facilities and amenities as described in the definition of "Improvements," in good condition and repair, in a manner consistent with a class "A" mixed-use commercial property located in Bronx, New York, and make or cause to be made all reasonably necessary repairs or replacements thereto;

(b) not remove, demolish or structurally alter, or permit or suffer the removal, demolition or structural alteration of, any of the Improvements without the prior written consent of Administrative Agent except to the extent required pursuant to the development of the Project and in connection with the Construction Work or as permitted by this Agreement or required by Applicable Law;

(c) subject to the terms of the Loan Documents (and the Condominium Declaration, if applicable), promptly restore or cause to be restored in like manner any portion of the Improvements which may be damaged or destroyed from any cause whatsoever;

(d) not commit, or permit, any waste of the Project; and

(e) subject to the terms of the Loan Documents (and the Condominium Declaration, if applicable), not remove or permit the removal of any item constituting part of the Project without replacing it with a comparable item of equal quality, value and usefulness; except that the foregoing provisions shall not prohibit the sale or disposition, in the ordinary course of business, of any property which is obsolete or such replacement is impracticable and not within the sound business judgment of Borrower, all as subject to the consent of Administrative Agent, which consent shall not be unreasonably withheld, delayed or conditioned.

(2) Upon the completion of construction of the Project, Borrower shall obtain Administrative Agent's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, to any alterations to the Improvements, other than alterations performed in connection with the restoration of the Project after the occurrence of a casualty in accordance with the terms and provisions of this Agreement (and the Condominium Declaration, if applicable).

Section 9.3 Real Estate Taxes; Charges(1) . Borrower shall pay before any fine, penalty, interest or cost may be added thereto, and shall not enter into any agreement to defer, any real estate taxes and assessments, franchise taxes and charges, and other governmental charges that may become a Lien upon the Project or become payable during the term of the Loans (collectively, the "**Real Estate Taxes**"), and will promptly furnish Administrative Agent with evidence of such payment; however, Borrower's compliance with Section 9.16 of this Agreement relating to impounds for taxes and assessments shall, with respect to payment of such taxes and assessments, be deemed compliance with this Section 9.3. Borrower shall not suffer or permit the joint assessment of the Project with any other real property constituting a separate tax lot or with any other real or personal property. Borrower shall pay when due all claims and

demands of mechanics, materialmen, laborers and others which, if unpaid, might result in a Lien on the Project; however, Borrower may contest the validity of such claims and demands or taxes so long as (1) Lead Borrower notifies Administrative Agent that Borrower intends to contest such claim or demand, (2) Borrower provides Administrative Agent with an indemnity, bond or other security satisfactory to Administrative Agent (including an endorsement to Administrative Agent's title insurance policy insuring against such claim or demand) assuring the discharge of Borrower's obligations for such claims and demands, including interest and penalties, (3) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the tenth (10th) day preceding the earlier to occur of the Maturity Date or the date on which the Project is scheduled to be sold, forfeited, terminated, cancelled or lost for non payment, (4) such proceedings shall not subject Borrower, the Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (2) above), and (5) Borrower shall promptly upon final determination thereof pay the amount of such items, together with all costs, interests and penalties.

(2) Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Notes or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Administrative Agent or any Lender. If there shall be enacted any law (1) deducting the Loans from the value of the Project for the purpose of taxation, (2) affecting any Lien on the Project, or (3) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Administrative Agent, on demand, all taxes, costs and charges for which Administrative Agent or any Lender is or may be liable as a result thereof; however, if such payment would be prohibited by law or would render the Loans usurious, then instead of collecting such payment, Administrative Agent may (and on the request of the Majority Lenders shall) declare all amounts owing under the Loan Documents to be immediately due and payable.

Section 9.4 Development; Management.

(1) Borrower shall not terminate, replace or appoint any property manager or terminate or amend the Property Management Agreement for the Project without Administrative Agent's prior written approval. Any change in majority ownership or control of the Property Manager shall be cause for Administrative Agent to reasonably re-approve such Property Manager and Property Management Agreement. Borrower shall replace the Property Manager as the request of the Administrative Agent (i) upon the occurrence of an Event of Default, (ii) if the Property Manager is in default of its obligations under the Property Management Agreement, or (iii) if the Property Manager is insolvent or is the subject of an involuntary or voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law.

(2) If at any time Administrative Agent consents to the appointment of a new property manager, such new property manager and Borrower shall, as a condition of Administrative Agent's consent, execute a Property Manager's Consent and Subordination of Property Management Agreement in the form then used by Administrative Agent. Each property manager shall hold and maintain all necessary licenses, certifications and permits required by

law. Borrower shall fully perform all of its covenants, agreements and obligations under the Property Management Agreement.

(3) Borrower shall cause the Project to be managed by a Qualified Manager engaged by Borrower and approved by Administrative Agent in its reasonable discretion. Acadia-P/A Management Services, LLC is hereby approved as the initial Property Manager, pursuant to the terms set forth in the Property Management Agreement.

(4) Subject to the terms of the Subordination of Property Management Agreement, the Property Manager shall be entitled to receive a management fee of not more than four percent (4%) of total operating revenues as defined in the applicable Property Management Agreement approved by the Administrative Agent.

(5) The Property Manager shall, prior to the Closing Date, deliver an executed Subordination of Property Management Agreement.

(6) Lead Borrower shall deliver to Administrative Agent, as and when executed, certified copies of all maintenance, management, service, leasing and sales contracts entered into with respect to the Project, each of which shall provide that Administrative Agent shall have the right, upon foreclosure, to terminate such contract on thirty (30) days notice, or, if such right is not provided in such contract, such contract shall be entered into with a party, and on terms and conditions reasonably acceptable to Administrative Agent, and contemporaneously with entering into each such contract, at Administrative Agent's option, cause the service provider under each such contract to deliver to Administrative Agent a Consent and Agreement, pursuant to which such service provider shall undertake, inter alia, to continue performance on behalf of the Lenders following any Event of Default without additional cost (other than sums owed pursuant to such contract for services thereafter rendered to or for Administrative Agent).

(7) Borrower will not enter into a development agreement with respect to the Project unless: (a) Administrative Agent has approved the developer in writing; (b) the form and substance of the development agreement is acceptable to Administrative Agent and (c) the development agreement has been collaterally assigned to the Administrative Agent, in accordance with a form reasonably acceptable to the Administrative Agent, and consented to by the developer.

Section 9.5 Compliance with Laws; Inspection.

(1) Borrower shall:

(a) comply in all material respects (subject to such more stringent requirements as may be set forth elsewhere herein) with all Applicable Laws;

(b) obtain, comply with and maintain in full force and effect all Government Approvals and shall from time to time obtain all Government Approvals as shall now or hereafter be necessary under Applicable Law in connection with the ownership, construction, operation or maintenance of the Project or the execution, delivery and performance by Borrower of any of the Project Documents to which it is a party and shall comply with all such Government Approvals and keep them in full force and effect;

(c) promptly furnish a true and complete copy of each such Government Approval to Administrative Agent;

(d) unless otherwise approved by the Administrative Agent, use its reasonable efforts to contest any proceedings before any Governmental Authority and to resist any proposed adverse changes in Applicable Law to the extent that such proceedings or changes are directed specifically toward the Project or could reasonably be expected to have a Material Adverse Effect; and

(e) permit Administrative Agent and the Lenders and their agents, representatives and employees, upon reasonable prior notice to Borrower, to inspect the Project and conduct such environmental and engineering studies and inspections of the Project as Administrative Agent may require, provided such inspections and studies are conducted during normal business hours and do not materially interfere with the use and operation of the Project.

(2) After prior notice by Lead Borrower to Administrative Agent, Borrower, at its own expense, may contest by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, the validity or application of any Applicable Law; provided that:

(a) no Event of Default exists;

(b) Borrower shall pay any outstanding fines, penalties or other payments under protest unless such proceeding shall suspend the collection of such items;

(c) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Project is subject and shall not constitute a default thereunder;

(d) no part of or interest in the Project will be in danger of being sold, forfeited, terminated, canceled or lost during the pendency of the proceeding;

(e) such proceeding shall not subject Borrower, Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (f) below);

(f) unless paid under protest, Borrower shall have furnished such security as may be required in the proceeding, or as may be reasonably requested by Administrative Agent, to insure the payment of any such items, together with all interest and penalties thereon, which shall not be less than 110% of the maximum liability of Borrower as reasonably determined by Administrative Agent; and

(g) Borrower shall promptly upon final determination thereof pay the amount of such items, together with all costs, interest and penalties.

(3) Administrative Agent will engage an inspecting architect at Borrower's reasonable expense, in accordance with Administrative Agent's standard engagement procedures, to review plans, specifications and budgets of the Project on a monthly basis, inspect

the Project and provide reports on such inspections to the Administrative Agent for the benefit of the Lenders.

Section 9.6 Legal Existence; Name, Etc.

(1) Borrower and each Managing Member in Borrower shall preserve and keep in full force and effect their respective existence as a Single Purpose Entity, entity status, franchises, rights and privileges under the laws of the state of its formation, and all qualifications, licenses and permits applicable to the ownership, use and operation of the Project. Neither Borrower nor any Managing Member of Borrower shall wind up, liquidate, dissolve, reorganize, merge, or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of all or substantially all of their respective assets, or acquire all or substantially all of the assets of the business of any Person, or permit any subsidiary or Affiliate of Borrower to do so. Borrower and each Managing Member in Borrower shall conduct business only in its own respective name and shall not change its respective name, identity, or organizational structure, or the location of its chief executive office or principal place of business unless Borrower or such Managing Member (a) shall have obtained the prior written consent of Administrative Agent to such change, and (b) shall have taken all actions necessary or requested by Administrative Agent to file or amend any financing statement or continuation statement to assure perfection and continuation of perfection of security interests under the Loan Documents.

(2) Borrower shall at all times cause there to be at least one (1) duly appointed member of the board of managers or other governing board or body of the managing member of the Managing Member, who is an Independent Manager. Borrower shall not take any action or permit any action to be taken which, under the terms of this Agreement, or the limited partnership agreement or limited liability company operating agreement of Borrower, the Managing Member, or the managing member of the Managing Member, requires the consent of such Independent Manager(s), unless such Independent Manager(s) shall have consented in writing to such action.

(3) Neither Borrower nor Borrower's Managing Member shall cause or permit any modification to be made in its organizational documents that would be inconsistent with the provisions of Section 7.27 or this Section 9.6, that would interfere with its ability to comply with its status as a Single Purpose Entity, as applicable, or that otherwise in any other respect would violate this Agreement or could reasonably be expected to have a Material Adverse Effect.

Section 9.7 Affiliate Transactions(1) Without the prior written consent of Administrative Agent, Borrower shall not engage in any transaction affecting the Project with an Affiliate of Borrower.

Section 9.8 Limitation on Other Debt.

(1) Borrower and Managing Member shall not, without the prior written consent of Administrative Agent and the Majority Lenders, incur any Debt other than, in the case of Borrower, the Debt permitted by the definition of Single Purpose Entity.

(2) Borrower shall not make any loans, and no direct or indirect interest in Borrower may be pledged as collateral for any financing or otherwise, except for the Approved

Mezzanine Loan and as otherwise may be permitted under this Agreement or expressly approved by Administrative Agent and Majority Lenders in their discretion.

Section 9.9 Further Assurances. Borrower shall promptly (1) cure any defects in the execution and delivery of the Loan Documents, and (2) execute and deliver, or cause to be executed and delivered, all such other documents, agreements and instruments as Administrative Agent may reasonably request to further evidence and more fully describe the collateral for the Loans, to correct any omissions in the Loan Documents, to perfect, protect or preserve any Liens created under any of the Loan Documents, or to make any recordings, file any notices, or obtain any consents, as may be necessary or appropriate in connection therewith.

Section 9.10 Loan Certificates. Borrower or Administrative Agent, within ten (10) days after request from the other party, shall furnish to the requesting party a written statement, duly acknowledged, setting forth the amount due on the Loans, the terms of payment of the Loans, the date to which interest has been paid, whether any offsets or defenses exist against the Loans and, if any are alleged to exist, the nature thereof in detail, and such other matters as the requesting party reasonably may request.

Section 9.11 Notice of Certain Events. Lead Borrower shall promptly notify Administrative Agent of (1) any Potential Default or Event of Default, together with a detailed statement of the steps being taken to cure such Potential Default or Event of Default; (2) any notice of default received by Borrower or any Borrower Party under other obligations relating to the Project or otherwise material to Borrower's business; and (3) any threatened or pending legal, judicial or regulatory proceedings, including any dispute between Borrower and any governmental authority, affecting Borrower or the Project.

Section 9.12 Indemnification. Borrower shall indemnify, defend and hold Administrative Agent and each Lender harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the reasonable fees and actual expenses of their counsel, which may be imposed upon, asserted against or incurred by any of them relating to or arising out of (1) the Project or (2) any of the Loan Documents or the transactions contemplated thereby, including, without limitation, (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about any of the Project or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways, (b) any inspection, review or testing of or with respect to the Project, (c) any investigative, administrative, mediation, arbitration, or judicial proceeding, whether or not Administrative Agent or any Lender is designated a party thereto, commenced or threatened at any time (including after the repayment of the Loans) in any way related to the execution, delivery or performance of any Loan Document or to the Project, (d) any proceeding instituted by any Person claiming a Lien, and (e) any brokerage commissions or finder's fees claimed by any broker or other party claiming to have dealt with the Borrower in connection with the Loans, the Project, or any of the transactions contemplated in the Loan Documents, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent or any Lender, except to the extent any of the foregoing is caused by Administrative Agent's or any Lender's gross negligence or willful misconduct, in which case the party to whom the gross negligence or willful misconduct is attributable (but not any other party) shall not be entitled to

the indemnification provided for hereunder to the extent of such gross negligence or willful misconduct, to the extent determined by a court of competent jurisdiction.

Section 9.13 Covenants Regarding the Condominium Declaration. Borrower covenants and agrees that, from and after the establishment of any condominium regime with respect to the Project:

(1) Borrower shall pay when due and before any fine, penalty, interest or cost may be added thereto for the late payment or non-payment thereof, all Unit Annual Assessments imposed on Borrower's Project Interest and all other charges mentioned in and payable by Borrower under the Condominium Declaration (including, without limitation, all insurance and taxes applicable to Borrower's Project Interest), and shall comply with all of its other obligations under the Condominium Declaration, and shall do all things necessary to preserve and to keep unimpaired Borrower's rights, powers and privileges (whether as the owner of the Units, as the Declarant, as the holder of any special class of voting rights, or otherwise) thereunder. If Borrower shall fail to do so, the Lenders shall, if required by Administrative Agent, pay such Unit Annual Assessments or other charges. Lead Borrower shall deliver to Administrative Agent, upon request, copies of receipts or other proof satisfactory to Administrative Agent evidencing the timely payment of such Unit Annual Assessments and other charges.

(2) Borrower shall comply with the covenants, agreements and provisions of the Condominium Documents, and Lead Borrower shall promptly notify Administrative Agent of (a) any failure by Borrower to comply with the Condominium Declaration and (b) the receipt by Borrower of any notice asserting or claiming a default by Borrower under the Condominium Declaration, and shall promptly cause a copy of such notice to be delivered to Administrative Agent.

(3) Borrower shall not vote in favor of or otherwise approve any amendment of the Condominium Declaration without the prior written consent of Administrative Agent, which consent shall not be unreasonably withheld.

(4) Borrower shall not waive any material right of the Borrower (whether as the owner of the Units, as the Declarant, as the holder of any special class of voting rights, or otherwise) under the Condominium Declaration without the prior written consent of Administrative Agent which shall not be unreasonably withheld.

(5) The Lien of the Mortgages shall encumber all of Borrower's Project Interest, including all of Borrower's rights to vote on or approve any matter with respect to Borrower's Project Interest. Without the prior written consent of Administrative Agent, Borrower shall not exercise such voting or approval rights with respect to any of the following:

- (a) any partition of all or a part of the Project subject to the Condominium Declaration;
- (b) the nature and amount of any insurance covering all or a part of the Project and the disposition of any proceeds thereof;

(c) the manner in which any condemnation or threat of condemnation of all or a part of the Project shall be defended or settled and the disposition of any award or settlement in connection therewith;

(d) the construction of any additions or improvements to, or any repair, rebuilding or restoration of all or a portion of any Improvements to, the Project (to the extent that the same would require the approval of Administrative Agent under this Agreement);

(e) the distribution of any insurance or condemnation proceeds (other than in compliance with this Agreement); and

(f) any other material action or decision provided for in the Condominium Declaration.

(6) If required by the Administrative Agent, Lead Borrower will take all action to obtain as promptly as possible, and forthwith upon receipt furnish to the Administrative Agent, a true and correct copy of: (a) any statement showing the allocation of expenses and other assessments against the Units and (b) any statements issued to Borrower calling for payment of expenses.

(7) Lead Borrower shall be, and remain through the repayment of the Loans in full, the Declarant under the Condominium Declaration.

(8) Borrower shall at all times comply with the provisions of Section 17.2(5), hereof.

(9) Borrower shall at all times comply with the covenants contained in Section 17.1(2).

(10) Borrower acknowledges and agrees that nothing set forth in this Section or in any of the other provisions of the Loan Documents shall impose upon Administrative Agent or any Lender any obligation or responsibility to Borrower under the Condominium Declaration.

Section 9.14 Collateral Letters of Credit. With respect to any Collateral Letter of Credit that Borrower may furnish or cause to be furnished to Administrative Agent in accordance with the terms of this Agreement or any of the other Loan Documents:

(1) Administrative Agent will be entitled, among other things, to make one or more draws by presentment thereof to the issuing bank accompanied only by Administrative Agent's clean sight-draft, it being intended that the issuing bank shall have no right to inquire as to Administrative Agent's right to draw upon such Collateral Letter of Credit;

(2) Administrative Agent shall be entitled, among other things, to draw upon each Collateral Letter of Credit, in whole, or in part from time to time, upon the occurrence and during the continuance of any Event of Default or under the other circumstances under which a draw shall be permitted under the Loan Documents or the Collateral Letter of Credit;

(3) Administrative Agent shall have the right to draw upon any Collateral Letter of Credit within thirty (30) days prior to the expiration date of such Collateral Letter of Credit and each renewal and extension thereof unless, prior to such expiration date of such Collateral Letter of Credit and each renewal and extension thereof, the Borrower shall have furnished a replacement, extension or renewal Collateral Letter of Credit, acceptable to Administrative Agent, it being the intent hereof that at no time shall the unexpired term of any Collateral Letter of Credit be less than thirty (30) days. If Administrative Agent draws upon a Collateral Letter of Credit pursuant to the terms of this subsection (3), then Administrative Agent shall hold the proceeds thereof in a Controlled Account as additional collateral for the Obligations, to be applied in accordance with subsection (5) below;

(4) Administrative Agent shall also be entitled to draw upon a Collateral Letter of Credit if Administrative Agent believes that its rights to draw on such Collateral Letter of Credit could be in jeopardy. Without limiting the foregoing, Administrative Agent shall also be entitled to draw on a Collateral Letter of Credit if the credit rating or financial condition of the issuing bank is no longer meets the minimum rating contained in the definition of Collateral Letter of Credit. Following a draw by Administrative Agent on a Collateral Letter of Credit solely because of the deterioration of the creditworthiness of the issuing bank, Administrative Agent will deposit such proceeds in a Controlled Account as security for the purposes for which such Letter of Credit was delivered and Administrative Agent shall be entitled to draw upon such proceeds to the same extent it would have been entitled to make a draw under the applicable Letter of Credit. Administrative Agent shall disburse such proceeds to Lead Borrower provided (i) Borrower delivers to Administrative Agent a replacement Collateral Letter of Credit within ten (10) days of Administrative Agent's draw, (ii) there exists no Event of Default or Potential Default and (iii) Borrower pays all of Administrative Agent's fees and expenses in connection with such draw and disbursement;

(5) No draw by Administrative Agent on any Collateral Letter of Credit shall cure or be deemed to cure any Event of Default or limit in any respect any of Administrative Agent's or the Lenders' remedies under the Loan Documents, it being understood that Administrative Agent's and the Lenders' rights and remedies hereunder shall be cumulative and Administrative Agent and the Lenders shall have no obligations to apply the proceeds of any draw to missed installments or other amounts then due and unpaid under the Loans. Proceeds of any draw upon a Collateral Letter of Credit (after reimbursement of any costs and expenses, including attorneys' fees and reimbursements, incurred by Administrative Agent in connection with such draw), other than a draw made in accordance with Section 9.14(4), may be applied by Administrative Agent to the payment of the Obligations in such manner as Administrative Agent may determine. No delay or omission of Administrative Agent or the Lenders in exercising any right to draw on a Collateral Letter of Credit shall impair any such right, or shall be construed as a waiver of, or acquiescence in, any Event of Default; and

(6) Administrative Agent shall, upon request, release its rights in any Collateral Letters of Credit and surrender such Collateral Letters of Credit to the issuing bank upon the payment in full of all obligations under the Loan Documents.

Section 9.15 Hedge Agreements.

(1) At Borrower's option, the Borrower may enter into one or more Hedge Agreements. Each Hedge Agreement shall, at Borrower's option, be based on Interest Periods (each, an "**Interest Rate Hedge Period**") of one, two, three months or such other Interest Periods satisfactory to Administrative Agent in its sole discretion. The economic and other benefits of the Hedge Agreements and all of the other rights thereunder shall be collaterally assigned to Administrative Agent as additional security for the Loans, pursuant to a Hedge Pledge. All Hedge Pledges shall be accompanied by (i) Uniform Commercial Code financing statements, in duplicate, with respect to such pledges and (ii) the consent and agreement of the counterparty thereunder that it will pay all amounts due thereunder to an account designated by Administrative Agent and will continue to perform its obligations under such Hedge Agreement for the benefit of Administrative Agent and the Lenders after enforcement of and/or realization on such Hedge Pledge and an acknowledgement that Administrative Agent shall not be deemed to have assumed any of the obligations or duties of Borrower under any such Hedge Agreement.

(2) All of Borrower's obligations under any Hedge Agreement provided by a Eurohypo Counterparty shall be secured by the lien of the Mortgages on a pari passu basis with the Loans and other sums evidenced or secured by the Loan Documents.

(3) Any Hedge Agreement entered into with one or more banks or insurance companies (each a "**Third-Party Counterparty**") other than a Eurohypo Counterparty (a "**Third-Party Hedge Agreement**") shall not be secured by the Mortgage or a Lien on any portion of the collateral under the Security Documents or on or in any direct or indirect interest in Borrower.

(4) Borrower shall cause all payments payable by a Third-Party Counterparty under the Hedge Agreement to be deposited into an account designated by Administrative Agent. On the due date for interest on the Loans each month, the amounts so deposited in such account shall be debited, and applied to pay the accrued but unpaid interest on the Loans due on such date, before applying any portion of the Loan proceeds which is allocated to the Interest Reserve for such purpose, and before applying any Operating Revenues for such purpose.

(5) Any payment due from the counterparty under any Hedge Agreement upon a termination thereof, shall be delivered to Administrative Agent and applied by Administrative Agent to any amounts due under the Loan Documents.

(6) In connection with a Third-Party Hedge Agreement, Lead Borrower shall obtain and deliver to Administrative Agent an opinion from counsel (which counsel may be in-house counsel for the Third-Party Counterparty) for the Third-Party Counterparty (in form reasonably satisfactory to Administrative Agent and upon which Administrative Agent, the Lenders and their respective successors and assigns may rely) which shall provide, in relevant part, that:

(a) the Third-Party Counterparty is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization and has

the organizational power and authority to execute and deliver, and to perform its obligations under, the Third-Party Hedge Agreement;

(b) the execution and delivery of the Third-Party Hedge Agreement by the Third-Party Counterparty, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been and remain duly authorized by all necessary action and do not contravene any provision of its certificate of incorporation or by-laws (or equivalent organizational documents) or any law, regulation or contractual restriction binding on or affecting it or its property;

(c) all consents, authorizations and approvals required for the execution and delivery by the Third-Party Counterparty of the Third-Party Hedge Agreement, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, and the performance of its obligations thereunder have been obtained and remain in full force and effect, all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with any governmental authority or regulatory body is required for such execution, delivery or performance; and

(d) the Third-Party Hedge Agreement, and any other agreement which the Third-Party Counterparty has executed and delivered pursuant thereto, has been duly executed and delivered by the Third-Party Counterparty and constitutes the legal, valid and binding obligation of the Third-Party Counterparty, enforceable against the Third-Party Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(7) For so long as a Hedge Agreement is in effect, Administrative Agent may elect to cause advances of the Loan proceeds available for interest payments to be used to make "regular" payments due under the Hedge Agreement (*i.e.*, other than those payments which are due upon the termination of such Hedge Agreement), in addition to interest payments on the Loans.

Section 9.16 Reserves. Administrative Agent may at any time after the occurrence of an Event of Default, at its option (or at the direction of the Majority Lenders), to be exercised by written notice to Lead Borrower, require the deposit by Borrower, on each Payment Date, of additional amounts sufficient to discharge when due the obligations of Borrower under Section 9.3 and Section 3.1 (if applicable, and excluding all income, franchise, single business or other taxes imposed on Borrower unless the same is in lieu of real estate taxes) when they become due. Simultaneously with the initial deposit under this Section 9.16, Borrower shall deposit with Administrative Agent an amount determined by Administrative Agent to be necessary to ensure that there will be on deposit with Administrative Agent an amount which, when added to the monthly payments subsequently required to be deposited with Administrative Agent hereunder on account of Real Estate Taxes, insurance premiums, will result in there being on deposit with Administrative Agent an amount sufficient to pay the next due periodic installment of Real Estate Taxes, insurance premiums one (1) month prior to the delinquency date thereof and the next periodic payments of insurance premiums one (1) month prior to the due date thereof.

Commencing on the first Business Day of the first calendar month after the occurrence of an Event of Default and continuing thereafter on the first Business Day of each month thereafter, Borrower shall pay to Administrative Agent deposits in an amount equal to one-twelfth (1/12) of the yearly amount of Real Estate Taxes, insurance premiums that will next become due and payable on the Project. The determination of the amount to be deposited with Administrative Agent with each installment shall be made by Administrative Agent in its reasonable discretion. Such amounts shall be held by Administrative Agent in an account under the sole dominion and control of Administrative Agent and applied (together with any interest earned thereon) to the payment of the obligations in respect to which such amounts were deposited or, at the option of the Administrative Agent, to the payment of said obligations in such order of priority as Administrative Agent shall determine, on or before the respective dates on which the same or any of them would become delinquent. If one (1) month prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligations in full, Borrower, within five (5) days after demand, shall deposit the amount of the deficiency with Administrative Agent. Nothing herein contained shall be deemed to affect any right or remedy of Administrative Agent and/or the Lenders under the provisions of this Agreement or the other Loans Documents or of any statute or rule of law to pay any such amount and to add the amount so paid together with interest at the Default Rate to the indebtedness secured by the Mortgages. Borrower hereby pledges to Administrative Agent (on behalf of the Lenders) and grants to Administrative Agent (on behalf of the Lenders) a security interest in any and all monies now or hereafter deposited in such reserves and the account established by Administrative Agent as additional security for the payment of the Loans and agrees to enter into an agreement with Administrative Agent and the bank where such account is established in order to perfect Administrative Agent's security interest therein. In making any payment from such reserves, Administrative Agent may do so according to any bill, statement or estimate or procured from the appropriate public office (with respect to Real Estate Taxes), insurer or agent (with respect to insurance premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any such charge.

Section 9.17 Handicapped Access.

(1) Borrower (a) agrees that it shall use commercially reasonable efforts to ensure that the Project shall at all times comply with the applicable requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, "**Access Laws**") and (b) has no actual knowledge as to the Project's non-compliance with any Access Laws where the failure to so comply could have a material adverse effect on the Project or on Borrower's ability to repay the Loans in accordance with the terms hereof.

(2) Notwithstanding any provisions set forth herein or in any other document regarding Administrative Agent's approval of alterations of the Project, Borrower shall not alter the Project in any manner which would materially increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Administrative Agent. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Administrative Agent may condition any such approval upon

receipt of a certificate of Access Law compliance from an architect, engineer, or other person reasonably acceptable to Administrative Agent.

(3) Lead Borrower agrees to give prompt notice to Administrative Agent of the receipt by Borrower of any written complaints related to violation of any Access Laws with respect to the Project and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

Section 9.18 Zoning. Borrower shall not, without Administrative Agent's prior consent, such consent not to be unreasonably withheld, seek, make, suffer, consent to or acquiesce in any change or variance in any zoning or land use laws or other conditions of use of the Project or any portion thereof. Borrower shall not use or permit the use of any portion of the Project in any manner that could result in such use becoming a non-conforming use under any zoning or land use law or any other applicable law or modify any agreements relating to zoning or land use matters or with the joinder or merger of lots for zoning, land use or other purposes, without the prior written consent of Administrative Agent. Without limiting the foregoing, in no event shall Borrower take any action that would reduce or impair either (a) the number of parking spaces at the Improvements or (b) access to the Project from adjacent public roads. Further, without Administrative Agent's prior written consent, such consent not to be unreasonably withheld, Borrower shall not file or subject any part of the Project to any declaration of condominium or co-operative or convert any part of the Project to a condominium, co-operative or other direct or indirect form of multiple ownership and governance.

Section 9.19 ERISA. Borrower shall not hire any employees, and shall obtain all workforce services required for the ownership, operation, construction or development of the Project by contracting therefor pursuant to the Construction Management Agreement and the Project Documents. Borrower shall not take any action, or omit to take any action, which would (a) cause Borrower's assets to constitute "plan assets" for purposes of ERISA or the Internal Revenue Code or (b) cause the transactions contemplated by this Agreement and the other Loan Documents to be nonexempt prohibited transactions (as such term is defined in Section 4975 of the Internal Revenue Code or Section 406 of ERISA) that could subject Administrative Agent and/or the Lenders, on account of any Loan or execution of the Loan Documents hereunder, to any tax or penalty on prohibited transactions imposed under Section 4975 of the Internal Revenue Code or Section 502(i) of ERISA.

Section 9.20 Books and Records. Borrower will, and will cause each of the other Borrower Parties to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Borrower will, and will cause each of the other Borrower Parties to, permit any representatives designated by Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

Section 9.21 Foreign Assets Control Regulations.

(1) Neither Borrower nor any Borrower Party shall use the proceeds of the Loan in any manner that will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended), Executive Order No. 13,224,66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or any enabling legislation or executive order relating to any of the same. Without limiting the foregoing, neither Borrower, nor any Borrower Party, nor any partner or member (or other direct or indirect principal) in a Borrower Party will permit itself nor any of its Subsidiaries to (a) become a blocked person described in Section 1 of the above referenced Executive Order or (b) knowingly engage in any dealings or transactions or be otherwise associated with any person who is known by such Borrower Party or who (after such inquiry as may be required by Applicable Law) should be known by such Borrower Party to be a blocked person.

(2) Each partner or member (or other direct or indirect principal) in Borrower shall be at all times during the term of the Loans an entity or person which is (and whose principals shall be) a reputable entity or person of good character and in good standing as reasonably determined by the Lenders, and is not adverse to any of the Lenders in any pending material litigation or arbitration in which any Lender is also a party.

Section 9.22 Performance of Project Documents and Easements.

(1) Borrower shall (a) perform and observe in all material respects all of its covenants and agreements contained in each of the Project Documents to which it is a party, (b) take all reasonable and necessary action to prevent the termination of any such Project Document in accordance with the terms thereof or otherwise, (c) enforce each material covenant or obligation of each such Project Document in accordance with its terms, (d) cause Lead Borrower to promptly give Administrative Agent copies of any material default or other material notices given by or on behalf of Borrower received by or on behalf of Borrower from any other Person under the Project Documents and (e) take all such action to achieve the purposes described in clauses (a), (b) and (c) of this Section 9.22 as may from time to time be reasonably requested by Administrative Agent; provided, however, that Borrower shall be permitted, upon Administrative Agent's reasonable approval, to contest the validity or applicability of any requirement under the Project Documents.

(2) Borrower will comply in all material respects with all restrictive covenants and easements affecting the Project (unless the Title Company has insured against the enforcement of same in the Title Policy). All covenants, easements, cross easements or operating agreements which may hereafter be acquired, entered into or amended by Borrower affecting the Project shall be submitted to Administrative Agent for reasonable approval prior to the execution thereof by Borrower, accompanied by a drawing or survey showing the location thereof.

Section 9.23 Operating Plan and Budget.

(1) Lead Borrower shall, no less than sixty (60) days after the satisfaction of the Project Work Substantial Completion Conditions, and then annually thereafter not later than November 15th of the previous calendar year, submit to Administrative Agent for Administrative Agent's written approval an annual operating and capital budget (each an "**Annual Budget**"), in form reasonably satisfactory to Administrative Agent setting forth in detail budgeted monthly Operating Revenues and monthly Operating Expenses and projected capital expenditures for the Project. Administrative Agent shall have the right to reasonably approve such Annual Budget (such approval to be in the Administrative Agent's sole discretion during an Event of Default and any period where Administrative Agent is taking action to remove the Property Manager). If Administrative Agent objects to the proposed Annual Budget, Administrative Agent shall advise Lead Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Lead Borrower a reasonably detailed description of such objections) and Lead Borrower shall within five (5) days after receipt of notice of any such objections revise such Annual Budget and resubmit the same to Administrative Agent such procedure to be repeated until such time as Administrative Agent shall approve such Annual Budget. Each such Annual Budget approved by Administrative Agent in accordance with terms hereof is referred to herein as an "**Approved Annual Budget**." Until such time that Administrative Agent has approved a proposed Annual Budget, the most recently Approved Annual Budget shall apply, provided that such Approved Annual Budget shall be adjusted to reflect actual increases in real estate taxes, insurance premiums and utilities expenses and shall otherwise be adjusted to reflect any change during the preceding year in the Consumer Price Index.

(2) Lead Borrower may at any time propose an amendment to an Approved Annual Budget for the remainder of the then current calendar year, and, when approved as provided below, such amended Approved Annual Budget shall be deemed to be and shall be effective as the Approved Annual Budget for such calendar year. Prior to making any expenditures not reflected in the then current Approved Annual Budget in excess of an aggregate amount of \$150,000 per annum, Lead Borrower shall propose an amendment to the Approved Annual Budget to Administrative Agent for its reasonable approval; provided, however, that Administrative Agent shall have no approval rights with respect to increases in non-discretionary items (e.g. real estate taxes and insurance premiums). Copies of any such proposed amended Approved Annual Budget shall be furnished at least fifteen (15) days before final adoption thereof to Administrative Agent for its approval. Administrative Agent shall have fifteen (15) days after receipt of any proposed amendment to the Approved Annual Budget to approve or disapprove such proposed amendment.

Section 9.24 Proceedings to Enjoin or Prevent Construction. If any proceedings are filed seeking to enjoin or otherwise prevent or declare invalid or unlawful all or any part of the Construction Work, Borrower, at its sole cost and expense, will cause such proceedings to be contested in a commercially reasonable manner, and in the event of an adverse ruling or decision, if commercially reasonable, prosecute all allowable appeals therefrom, and will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and use its best efforts to bring about a favorable and speedy disposition of all such proceedings.

Section 9.25 Industrial and Commercial Incentive Program

(1) On or before the Closing Date, Borrower shall deliver to Administrative Agent the preliminary application submitted to the New York City Department of Finance (“Department of Finance”) evidencing the Project’s eligibility for the partial tax exemption in accordance with paragraph 24 of Schedule 4-Part A.

(2) Pursuant to Title 11, Chapter 2, Part 4 of the Administrative Code of the City of New York City and the regulations promulgated thereunder, as amended from time to time (“Code”), Borrower shall make a thorough and complete final application to the Department of Finance for a certificate of eligibility for a partial exemption of real property taxes for the Improvements for a twenty-five (25) year period (“ICIP Tax Exemption”) subsequent to commencing construction on the Project. Borrower shall provide a copy of the said application to Administrative Agent evidencing that same was received by the Department of Finance.

(3) Pursuant to the Code, Borrower shall submit a thorough and complete final construction report within sixty (60) days of completing construction on the Project to the Department of Finance for a certificate of eligibility for the ICIP Tax Exemption. Borrower shall provide a copy of the certificate of eligibility, or if unavailable, a letter from the Department of Finance evidencing same, to Administrative Agent promptly upon Borrower’s receipt thereof and in any event no later than sixty (60) days after the submission of such application, or such later date to the extent that the Borrower’s failure to receive such certificate is due to Unavoidable Delay.

(4) Before, during and after the construction of the Improvements, Borrower shall do all things necessary and required by statute, rule and regulation to maintain the availability of the ICIP Tax Exemption, including, but not limited to the following: (i) notify the ICIP unit of the Department of Finance (“ICIP Unit”) and the New York City Department of Small Business Services/Division of Labor Services (“Division of Labor Services”) in writing fifteen (15) business days prior to commencing construction on the Project; (ii) submit construction employment reports for the Project to the Division of Labor Services; and, if requested by the Department of Finance, file a certificate of continuing use with the ICIP Unit annually in each year of benefit period.

(5) Notwithstanding anything to the contrary in this Agreement, Borrower’s failure to obtain a certificate of eligibility for a ICIP Tax Exemption pursuant to clauses (2) and (3) above shall not constitute a default provided that (a) Borrower has otherwise complied with the provisions of this Section 9.25, (b) is diligently proceeding to obtain such certificate and (iii) the only cause for Borrower’s inability to obtain the applicable certificate is the Department of Finance’s bureaucratic delay in issuing the applicable certificate and not for reasons related to Borrower’s actions or eligibility.

Section 9.26 Reserved.

Section 9.27 Reserved.

Section 9.28 Reimbursement of Expenses. Borrower shall pay or reimburse Administrative Agent and/or the Lenders on demand of the applicable party for: (1) all

reasonable expenses incurred by Administrative Agent in connection with the Loans, including reasonable fees and expenses of Administrative Agent's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the negotiation, recording or filing of Loan Documents, (2) all reasonable out-of-pocket expenses of Administrative Agent in connection with the administration of the Loans, including audit costs, inspection fees, reasonable attorneys' fees and disbursement, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto, (3) all of Administrative Agent's reasonable costs and expenses (including reasonable fees and disbursements of Administrative Agent's external counsel) incurred in connection with the syndication of the Loans to the Lenders, not to exceed \$25,000 (excluding attorney's fees and internal expenses incurred by the Borrower), and (4) Administrative Agent and the Lenders for all amounts expended, advanced or incurred by Administrative Agent and the Lenders to collect the Notes, or to enforce the rights of Administrative Agent and the Lenders under this Agreement or any other Loan Document, or to defend or assert the rights and claims of Administrative Agent and the Lenders under the Loan Documents or with respect to the Project (by litigation or other proceedings), which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be incurred by Administrative Agent and the Lenders in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to Administrative Agent and the Lenders, all of which shall constitute part of the Loans and shall be secured by the Loan Documents.

ARTICLE 10

EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default under the Loans:

Section 10.1 Payments. Borrower's failure to (i) pay any regularly scheduled installment of principal, interest, the Agency Fee or other amount due under the Loan Documents or (ii) make a deposit of cash, and/or deliver a Collateral Letter of Credit required under the Loan Documents, within five (5) days of (and including) the date when due, or Borrower's failure to pay the Loans at the Maturity Date, whether by acceleration or otherwise.

Section 10.2 Insurance. Borrower's failure to maintain insurance as required under Section 3.1 of this Agreement.

Section 10.3 Single Purpose Entity. If Borrower or any Borrower Party materially breaches its covenant under Section 9.6 with respect to its status as a Single Purpose Entity.

Section 10.4 Real Estate Taxes. If any of the Real Estate Taxes are not paid when the same are due and payable and such failure continues for ten (10) Business days after Borrower has actual knowledge of such failure.

Section 10.5 Sale, Encumbrance, Etc. The sale, transfer, conveyance, pledge, mortgage or assignment of any part or all of the Project, or any interest therein, or of any interest in Borrower, in violation of Section 9.1 of this Agreement.

Section 10.6 Representations and Warranties. Any representation or warranty made in any Loan Document proves to be untrue in any material respect when made or deemed made.

Section 10.7 Other Encumbrances. Any material default under any document or instrument, other than the Loan Documents, evidencing or creating a Lien on the Project or any part thereof that is not cured within any applicable notice or cure period.

Section 10.8 Various Covenants. Borrower defaults under any of its obligations under Section 6.2 (pertaining to lease approvals), 9.7 (transactions with Affiliates), 9.8 (limitations on debt), 9.18 (zoning and use changes) or 9.19 (ERISA), of this Agreement.

Section 10.9 Reserved.

Section 10.10 Financial Covenants. Borrower defaults under any of its obligations under Section 9.12 and Section 9.28 of this Agreement.

Section 10.11 Involuntary Bankruptcy or Other Proceeding. Commencement of an involuntary case or other proceeding against any Borrower Party which seeks liquidation, reorganization or other relief with respect to it or its debts or other liabilities under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any of its property, and such involuntary case or other proceeding shall remain undismissed or unstayed for a period of sixty (60) days; or an order for relief against a Borrower Party shall be entered in any such case under the Federal Bankruptcy Code.

Section 10.12 Voluntary Petitions, Etc. Commencement by a Borrower Party of a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debts or other liabilities under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or any of its property, or consent by a Borrower Party to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or the making by a Borrower Party of a general assignment for the benefit of creditors, or the failure by a Borrower Party, or the admission by a Borrower Party in writing of its inability, to pay its debts generally as they become due, or any action by a Borrower Party to authorize or effect any of the foregoing.

Section 10.13 Debt. The occurrence, at any time prior to Substantial Completion, of any "Event of Default" under (and as such term is defined in) the loan agreement included within the Approved Mezzanine Loan Documents; or Borrower or Managing Member shall default in the payment when due of any principal of or interest on any of its other Debt aggregating \$1,000,000 or more and such default shall not be cured within any applicable notice or cure period provided with respect to such Debt; or any event specified in any note, agreement, indenture or other document evidencing or relating to any such Debt shall occur if the effect of such event is to cause, or (with the giving of any notice or the lapse of time or both) to permit the holder or holders of such Debt to cause, such Debt to become due, or to be prepaid in full (whether by redemption, purchase, offer to purchase or otherwise); prior to its stated maturity.

Section 10.14 Dissolution. Any of Borrower Parties shall be terminated, dissolved or liquidated (as a matter of law or otherwise) or proceedings shall be commenced by any Person (including any Borrower Party) seeking the termination, dissolution or liquidation of any Borrower Party, which, in the case of actions by Persons other than a Borrower Party or any of their Affiliates, shall continue unstayed and in effect for a period of sixty (60) or more days.

Section 10.15 Judgments. One or more (i) judgments for the payment of money (exclusive of judgment amounts fully covered by insurance where the insurer has admitted liability in respect of such judgment) aggregating with respect to any Borrower Party (other than Guarantor) in excess of \$1,000,000 shall be rendered against such party or (ii) non-monetary judgments, orders or decrees shall be entered against any of the Borrower Parties which have or would reasonably be expected to have a Material Adverse Effect, and, in either case, the same shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of such Borrower Party to enforce any such judgment.

Section 10.16 Security. The Liens created by the Security Documents shall at any time not constitute a valid and perfected first priority Lien (subject to the Permitted Encumbrances) on the collateral intended to be covered thereby in favor of Administrative Agent, free and clear of all other Liens (other than the Permitted Encumbrances), or, except for expiration in accordance with its terms, any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect, or the enforceability thereof shall be contested by any Borrower Party or any of their Affiliates, provided that, as long as the security provided by the Security Documents shall not be impaired, with respect to a Lien (other than a Permitted Encumbrance) on the collateral, Borrower shall have ten (10) days for monetary Liens and thirty (30) days for all non-monetary Liens within which provide Administrative Agent with evidence that such Lien has been bonded or otherwise removed of record.

Section 10.17 Guarantor Documents. Guarantor shall (i) default under any Guarantor Document beyond any applicable notice and grace period; or (ii) revoke or attempt to revoke, contest or commence any action against its obligations under any Guarantor Document.

Section 10.18 Reserves. Borrower uses, or permits the use of, funds from any reserves or from any Controlled Account required under this Agreement for any purpose other than the purpose for which such funds were disbursed from such reserves or such Controlled Account and such default is not cured within ten (10) days of Borrower's knowledge of such default.

Section 10.19 Co-Borrower Documents. Either Borrower shall (i) default under any Co-Borrower Document beyond any applicable notice and grace period; or (ii) revoke or attempt to revoke, contest or commence any action against its obligations under any Co-Borrower Document.

Section 10.20 Covenants. Borrower's failure to perform or observe any of the agreements and covenants contained in this Agreement or in any of the other Loan Documents and not specified above, and, if such failure is susceptible to being cured, the continuance of such failure for thirty (30) days after notice by Administrative Agent to Lead Borrower; provided, however, subject to any shorter period for curing any failure by Borrower as specified in any of the other Loan Documents, Borrower shall have an additional ninety (90) days to cure such failure if (1) such failure does not involve the failure to make payments on a monetary obligation; (2) such failure

cannot reasonably be cured within thirty (30) days; (3) Borrower is diligently undertaking to cure such default, and (4) Borrower has provided Administrative Agent with security reasonably satisfactory to Administrative Agent against any reasonably anticipated interruption of payment or impairment of collateral as a result of such continuing failure.

Section 10.21 Deficiency Deposits. Borrower shall fail to make a Deficiency Deposit or Equity Balancing Contribution within the time and in the manner provided in Section 4.3.

Section 10.22 Reserved.

Section 10.23 Reserved.

Section 10.24 Building Loan Agreement Default. An Event of Default shall occur under the Building Loan Agreement.

ARTICLE 11

REMEDIES

Section 11.1 Remedies — Insolvency Events. Upon the occurrence of any Event of Default described in Section 10.11 or Section 10.12, the obligations of the Lenders to advance amounts hereunder shall immediately terminate, and all amounts due under the Loan Documents immediately shall become due and payable, all without written notice and without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or any other notice of default of any kind, all of which are hereby expressly waived by Borrower; provided, however, if Borrower Party under Section 10.11 or Section 10.12 is other than Borrower, then all amounts due under the Loan Documents shall become immediately due and payable at Administrative Agent's election.

Section 11.2 Remedies — Other Events. Except as set forth in Section 11.1 above, while any Event of Default exists, Administrative Agent may (1) by written notice to Lead Borrower, declare the entire amount of the Loans to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor, notice of intent to accelerate the maturity thereof, notice of acceleration of the maturity thereof, or other notice of default of any kind, all of which are hereby expressly waived by Borrower, (2) terminate the obligation, if any, of the Lenders to advance amounts hereunder, and (3) exercise all rights and remedies therefor under the Loan Documents and at law or in equity.

Section 11.3 Administrative Agent's Right to Perform the Obligations. Without limiting the provisions of Section 11.4 below, if Borrower shall fail, refuse or neglect to make any payment or perform any act required by the Loan Documents, then while any Event of Default exists, and without notice to or demand upon Borrower and without waiving or releasing any other right, remedy or recourse Administrative Agent or any Lender may have because of such Event of Default, Administrative Agent may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Borrower, and shall have the right to enter upon the Project for such purpose and to take all such action thereon and with respect to the Project and the other collateral for the Loans as it may deem necessary or appropriate. If Administrative Agent shall elect to pay any sum due with reference to the

Project, Administrative Agent may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by the Loan Documents, Administrative Agent shall not be bound to inquire into the validity of any apparent or threatened adverse title, Lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same. Additionally, if any Hazardous Materials affect or threaten to affect the Project, Administrative Agent may (but shall not be obligated to) give such notices and take such actions as it deems necessary or advisable in order to abate the discharge of any Hazardous Materials or remove the Hazardous Materials. Borrower shall indemnify, defend and hold Administrative Agent and the Lenders harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees and disbursements, incurred or accruing by reason of any acts performed by Administrative Agent or any Lender pursuant to the provisions of this Section 11.3, including those arising from the joint, concurrent, or comparative negligence of Administrative Agent and any Lender, except as a result of Administrative Agent's or any Lender's gross negligence or willful misconduct. All sums paid by Administrative Agent pursuant to this Section 11.3, and all other sums expended by Administrative Agent or any Lender to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such payment or expenditure until paid, shall constitute additions to the Loans, shall be secured by the Loan Documents and shall be paid by Borrower to Administrative Agent upon demand.

Section 11.4 Administrative Agent's Right to Complete Construction. Administrative Agent may take possession of the Project and complete the construction and equipping of the Improvements and do anything in its sole judgment to fulfill the obligations of Borrower hereunder, including either the right to avail itself of and procure performance of existing contracts or enter into any contracts with the same contractors or others and to employ watchmen to protect the Project from injury. Without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes Administrative Agent its lawful attorney-in-fact with full power of substitution in the Project to complete construction of the Improvements in the name of Borrower; to use unadvanced funds remaining under the Commitments or which may be reserved, or escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes (and all such amounts shall be payable by Borrower together with interest at the Default Rate), to complete the Improvements; to make changes in the Plans and Specifications which shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans and Specifications; to retain or employ new construction managers, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle, or compromise all existing bills and claims and Liens against the Project and take any other steps relating to clearing title to the Project from any Liens that are not Permitted Encumbrances, or to avoid such bills and claims becoming Liens against the Project or security interest against fixtures or equipment, or as may be necessary or desirable for the completion of the construction and equipping of the Improvements or for the clearance of title; to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; to do any and every act which Borrower might do in its own behalf; and to prosecute and defend all actions or proceedings in connection with the Project or fixtures or equipment; to take action and

require such performance as it deems necessary under any bonds furnished in connection with the construction of the Improvements and to make settlements and compromises with surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction; it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked.

Section 11.5 Administrative Agent's Rights under the Guaranty of Completion. Exercise the Lenders' rights under the Guaranty of Completion to require Guarantor to perform thereunder, in which case Borrower hereby (1) authorizes Administrative Agent and the Lenders to make advances of the Loans directly to Guarantor in accordance with the terms of the Guaranty of Completion and this Agreement and (2) agrees that Borrower shall be liable to the Lenders for all such advances to Guarantor and such advances shall be deemed Loans under this Agreement and be evidenced by the Notes and secured by the Mortgages and the other Security Documents.

Section 11.6 NO OBLIGATION WITH RESPECT TO COMPLETION OF THE IMPROVEMENTS. WHETHER OR NOT ADMINISTRATIVE AGENT OR THE LENDERS ELECT TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, NEITHER ADMINISTRATIVE AGENT NOR ANY OF THE LENDERS SHALL BE LIABLE FOR THE CONSTRUCTION OF OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT THE IMPROVEMENTS OR FOR PAYMENT OF ANY EXPENSES INCURRED IN CONNECTION WITH THE EXERCISE OF ANY REMEDY AVAILABLE TO ADMINISTRATIVE AGENT OR THE LENDERS OR FOR THE PERFORMANCE OR NON-PERFORMANCE OF ANY OTHER OBLIGATION OF BORROWER.

ARTICLE 12

MISCELLANEOUS

Section 12.1 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and either shall be (a) mailed by certified mail, postage prepaid, return receipt requested, (b) sent by overnight air courier service, (c) personally delivered to a representative of the receiving party, or (d) sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1) to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof. Any communication so addressed and mailed shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Administrative Agent, a Lender, Lead Borrower or Borrower, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified above, and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1. Any

party may designate a change of address by written notice to each other party by giving at least ten (10) days' prior written notice of such change of address.

Section 12.2 Amendments, Waivers, Etc.. This Agreement and any other Loan Document may be modified only by an instrument in writing signed by Borrower and Administrative Agent, subject to Section 14.9.

Section 12.3 Compliance with Usury Laws. It is the intention of the parties hereto to conform strictly to applicable usury laws. Accordingly, all agreements between Borrower, Administrative Agent and the Lenders with respect to the Loans are hereby expressly limited so that in no event, whether by reason of acceleration of maturity or otherwise, shall the amount paid or agreed to be paid to Administrative Agent or any Lender or charged by any Lender for the use, forbearance or detention of the money to be lent hereunder or otherwise, exceed the maximum amount allowed by law. If the Loans would be usurious under Applicable Law (including the laws of the State and the laws of the United States of America), then, notwithstanding anything to the contrary in the Loan Documents: (1) the aggregate of all consideration which constitutes interest under Applicable Law that is contracted for, taken, reserved, charged or received under the Loan Documents shall under no circumstances exceed the maximum amount of interest allowed by Applicable Law, and any excess shall be credited on the Notes by the holders thereof (or, if the Notes have been paid in full, refunded to Borrower); and (2) if maturity is accelerated by reason of an election by Administrative Agent in accordance with the terms hereof, or in the event of any prepayment, then any consideration which constitutes interest may never include more than the maximum amount allowed by Applicable Law. In such case, excess interest, if any, provided for in the Loan Documents or otherwise, to the extent permitted by Applicable Law, shall be amortized, prorated, allocated and spread from the date of advance until payment in full so that the actual rate of interest is uniform through the term hereof. If such amortization, proration, allocation and spreading is not permitted under Applicable Law, then such excess interest shall be cancelled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Notes (or, if the Notes have been paid in full, refunded to Borrower). The terms and provisions of this Section 12.3 shall control and supersede every other provision of the Loan Documents. Except as otherwise expressly provided therein, the Loan Documents are contracts made under and shall be construed in accordance with and governed by the laws of the State of New York, except that if at any time the laws of the United States of America permit the Lenders to contract for, take, reserve, charge or receive a higher rate of interest than is allowed by the laws of the State of New York (whether such federal laws directly so provide or refer to the law of any state), then such federal laws shall to such extent govern as to the rate of interest which the Lenders may contract for, take, reserve, charge or receive under the Loan Documents.

Section 12.4 Invalid Provisions. If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 12.5 Approvals; Third Parties; Conditions. All approval rights retained or exercised by Administrative Agent and the Lenders with respect to leases, contracts, plans, studies and other matters are solely to facilitate the Lenders' credit underwriting, and shall not be deemed or construed as a determination that the Lenders have passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person. This Agreement is for the sole and exclusive use of Administrative Agent, the Lenders, the Lead Borrower and Borrower and may not be enforced, nor relied upon, by any Person other than Administrative Agent, the Lenders, the Lead Borrower and Borrower. All conditions of the obligations of Administrative Agent and the Lenders hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders, their successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that the Lenders will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Administrative Agent and the Lenders at any time in their sole discretion.

Section 12.6 Lenders and Administrative Agent Not in Control; No Partnership. None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Administrative Agent or any Lender the right or power to exercise control over the affairs or management of Borrower, the powers of Administrative Agent and the Lenders being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between Borrower and the Lenders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders, Lead Borrower and Borrower. Administrative Agent and the Lenders neither undertake nor assume any responsibility or duty to Borrower or to any other person with respect to the Loans, the Project or the other collateral for the Loans, except as expressly provided in the Loan Documents. Notwithstanding any other provision of the Loan Documents: (1) neither Administrative Agent nor any Lender is, nor shall be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower or any Borrower Party or any of their respective stockholders, members, or partners, and neither Administrative Agent nor any Lender intends to ever assume such status; (2) no Lender or Administrative Agent shall in any event be liable for any Debts, expenses or losses incurred or sustained by Borrower or any Borrower Party; and (3) no Lender or Administrative Agent shall be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or any Borrower Party or any of their respective stockholders, members, or partners. Administrative Agent, the Lenders and Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders and Borrower, or to create an equity in the Project or any other collateral for the Loan in Administrative Agent or any Lender, or any sharing of liabilities, losses, costs or expenses.

Section 12.7 Time of the Essence. Time is of the essence with respect to this Agreement.

Section 12.8 Successors and Assigns. Subject to the provisions of Section 12.23, this Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders and Borrower and the respective successors and permitted assigns.

Section 12.9 Renewal, Extension or Rearrangement. All provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loans.

Section 12.10 Waivers. No course of dealing on the part of Administrative Agent or any Lender, their officers, employees, consultants or agents, nor any failure or delay by Administrative Agent or any Lender with respect to exercising any right, power or privilege of Administrative Agent or any Lender under any of the Loan Documents, shall operate as a waiver thereof.

Section 12.11 Cumulative Rights. Rights and remedies of Administrative Agent and the Lenders under the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

Section 12.12 Singular and Plural. Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 12.13 Phrases. When used in this Agreement and the other Loan Documents, the phrase “including” shall mean “including, but not limited to,” the phrases “satisfactory to any Lender” or “satisfactory to Administrative Agent” shall mean in form and substance satisfactory to such Lender or Administrative Agent, as the case may be, in all respects, the phrases “with Lender’s consent,” “with Lender’s approval,” “with Administrative Agent’s consent” or “with Administrative Agent’s approval” shall mean such consent or approval at Lender’s or Administrative Agent’s, as the case may be, discretion, and the phrases “acceptable to Lender” or “acceptable to Administrative Agent” shall mean acceptable to Lender or Administrative Agent, as the case may be, at such party’s sole discretion.”

Section 12.14 Exhibits and Schedules. The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 12.15 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 12.16 Promotional Material. Borrower authorizes Administrative Agent and each of the Lenders to issue press releases, advertisements and other promotional materials in

connection with Administrative Agent's or such Lender's own promotional and marketing activities, and describing the Loans in general terms or in detail and Administrative Agent's or such Lender's participation in the Loans. All references to Administrative Agent or any Lender contained in any press release, advertisement or promotional material issued by Borrower shall be approved in writing by Administrative Agent and such Lender in advance of issuance.

Section 12.17 Survival. All of the representations, warranties, covenants, and indemnities of Borrower hereunder (including environmental matters under Article 5, the obligations under Sections 2.7(1), 2.7(5), 2.7(6)), and under the indemnification provisions of the other Loan Documents shall survive (a) the repayment in full of the Loans and the release of the Liens evidencing or securing the Loans, (b) the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Project to any party, whether or not an Affiliate of Borrower and (c) in the case of any Lender that may assign any interest in its Commitment or Loans hereunder in accordance with the terms of this Agreement, the making of such assignment, notwithstanding that such assigning Lender may cease to be a "Lender" hereunder.

Section 12.18 WAIVER OF JURY TRIAL. BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOANS OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER THIS AGREEMENT.

Section 12.19 Remedies of Borrower. It is expressly understood and agreed that, notwithstanding any Applicable Law or any provision of this Agreement or the other Loan Documents to the contrary, the liability of Administrative Agent and each Lender (including their respective successors and assigns) and any recourse of Borrower against Administrative Agent and each Lender shall be limited solely and exclusively to their respective interests in the Loans and/or Commitments or the Project. Without limiting the foregoing, in the event that a claim or adjudication is made that Administrative Agent, any of the Lenders, or their agents, acted unreasonably or unreasonably delayed acting in any case where by Applicable Law or under this Agreement or the other Loan Documents, Administrative Agent, any Lender or any such agent, as the case may be, has an obligation to act reasonably or promptly, or otherwise violated this Agreement or the Loan Documents, Borrower agrees that none of Administrative Agent, the Lenders or their agents shall be liable for any incidental, indirect, special, punitive, consequential or speculative damages or losses resulting from such failure to act reasonably or promptly in accordance with this Agreement or the other Loan Documents.

Section 12.20 Governing Law. This Agreement, the notes and the other Loan Documents shall be governed by, and construed in accordance with the law of the State of New York, except to the extent otherwise specified in any of the Loan Documents.

THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY ADMINISTRATIVE AGENT AND LENDERS AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTES DELIVERED PURSUANT HERETO SHALL BE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THE NOTES, AND THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST ADMINISTRATIVE AGENT, ANY LENDER OR BORROWER ARISING OUT OF OR RELATING TO THE LOAN DOCUMENTS MAY AT ADMINISTRATIVE AGENT'S OPTION (WHICH DECISION SHALL BE MADE BY THE MAJORITY LENDERS) BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR *FORUM NON CONVENIENS* OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT NATIONAL REGISTERED AGENTS, INC., 875 AVENUE OF THE AMERICAS, SUITE 501, NEW YORK, NY 10001 AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT,

ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER, IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (A) SHALL GIVE PROMPT NOTICE TO ADMINISTRATIVE AGENT OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (B) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (C) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.]

Section 12.21 Entire Agreement. This Agreement and the other Loan Documents embody the entire agreement and understanding between Administrative Agent, the Lenders and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between any term sheet, application or commitment letter and this Agreement or any of the other Loan Documents, the terms of this Agreement shall control.

Section 12.22 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 12.23 Assignments and Participations.

(1) **Assignments by the Lenders.** Each Lender may assign any of its Loans, its Note and its Commitment (but only with the consent of Administrative Agent); provided that:

(a) no such consent by Administrative Agent shall be required in the case of any assignment by any Lender to another Lender or an Affiliate of such Lender or such other Lender (provided that in the case of an assignment to any such Affiliate, the assigning Lender will not be released from its obligations under the Loan Documents and the Administrative Agent may continue to deal only with such assigning Lender);

(b) except to the extent Administrative Agent shall otherwise consent, any such partial assignment (other than to another Lender or an Affiliate of a Lender) shall be in an amount at least equal to \$10,000,000;

(c) each such assignment (including an assignment to another Lender or an Affiliate of a Lender) by a Lender of its Loans or Commitment shall be made in such manner so that the same portion of its Loans and Commitment is assigned to the respective assignee;

(d) subject to the applicable Lender's compliance with the provisions of clauses (b) and (c) above, no consent by Borrower shall be required and Administrative Agent's consent shall not be unreasonably withheld, delayed or conditioned if such assignment is made to an Eligible Assignee, and the provisions of clause (e) have been satisfied; and

(e) upon execution and delivery by the assignee (even if already a Lender) to Borrower and Administrative Agent of an Assignment and Assumption pursuant to which such assignee agrees to become a "Lender" hereunder (if not already a Lender) having the Commitment and Loans specified in such instrument, and upon consent thereto by Administrative Agent to the extent required above, the assignee shall have, to the extent of such assignment (unless otherwise consented to by Administrative Agent), the obligations, rights and benefits of a Lender hereunder holding the Commitment and Loans (or portions thereof) assigned to it (in addition to the Commitment and Loans, if any, theretofore held by such assignee) and the assigning Lender shall, to the extent of such assignment, be released from the Commitment (or portion thereof) so assigned. Upon each such assignment the assigning Lender shall pay Administrative Agent a processing and recording fee of \$3,500 and the reasonable fees and disbursements of Administrative Agent's counsel incurred in connection therewith.

(2) **Approval by Borrower.** In the event Borrower's consent to an assignment is required under Section 12.23(1), such consent shall not be unreasonably withheld, and shall be granted or denied in writing delivered to Administrative Agent within five (5) Business Days from the date of Administrative Agent's or a Lender's request therefor. If Administrative Agent does not receive such consent or a denial of such consent in writing within said five (5) Business Days following delivery of a request for such consent, Borrower's consent shall be deemed to have been granted. In the event Borrower withholds its consent, Lead Borrower shall, concurrently with Borrower's written disapproval, provide written notice to Administrative Agent and such Lender of the reasons for Borrower's disapproval.

(3) Participations.

(a) A Lender may sell to one or more other Persons (each a "**Participant**") a participation in all or any part of any Loans held by it, or in its Commitment, provided (A) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Borrower, Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. In no event shall a Lender that sells a participation agree with the Participant to take or refrain from taking any action hereunder or under any other Loan Document except that such Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase or extend the term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal or of interest on the related Loan or Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, (iv) reduce the rate at which interest is payable thereon, or any fee hereunder payable to the Participant, to a level below the rate at which the Participant is entitled to receive such interest or fee or (v) consent to any modification, amendment or waiver hereof or of any of the other Loan Documents to the extent that the same, under Section 12.2, requires the consent of each Lender.

Borrower agrees that each Participant shall be entitled to the benefits of Section 2.7(1), Section 2.7(5), and Section 2.7(6) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.23; provided, however, that a Participant that is a non-U.S. Person that would become a Lender shall not be entitled to the benefits of Section 2.7(6) unless Lead Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Section 2.7(6) as though it were a Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.23 as though it were a Lender; provided that such Participant agrees to be subject to Section 12.23 as though it were a Lender.

(4) **Certain Pledges.** In addition to the assignments and participations permitted under the foregoing provisions of this Section 12.23 (but without being subject thereto), any Lender may (without notice to Borrower, Administrative Agent or any other Lender and without payment of any fee) assign and pledge all or any portion of its Loans and its Note to any Federal Reserve Bank as collateral security pursuant to Regulation A and any operating circular issued by such Federal Reserve Bank, and such Loans and Note shall be fully transferable as provided therein. No such assignment shall release the assigning Lender from its obligations hereunder.

(5) **Provision of Information to Assignees and Participants.** A Lender may furnish any information concerning Borrower, any Borrower Party or any of their respective Affiliates or the Project in the possession of such Lender from time to time to assignees and participants (including prospective assignees and participants); provided that such assignee and participant agree to be bound by the terms of Section 12.29.

(6) **No Assignments to Borrower or Affiliates.** Anything in this Section 12.23 to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to Borrower or any of its Affiliates without the prior consent of each Lender.

Section 12.24 Brokers. Borrower hereby represents to Administrative Agent and each Lender that Borrower has not dealt with any broker, underwriters, placement agent, or finder in connection with the transactions contemplated by this Agreement and the other Loan Documents. Borrower hereby agrees to indemnify and hold Administrative Agent and each Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower in connection with the transactions contemplated herein.

Section 12.25 Right of Set-off.

(1) Upon the occurrence and during the continuance of any Event of Default, each of the Lenders is, subject (as between the Lenders) to the provisions of subsection (3) of this Section 12.25, hereby authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower) and to the fullest extent permitted by law, to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other indebtedness at any time owing, by such Lender in any of its offices, in Dollars or in any other currency, to or for the credit or the account of

Borrower against any and all of the respective obligations of Borrower now or hereafter existing under the Loan Documents, irrespective of whether or not such Lender or any other Lender shall have made any demand hereunder and although such obligations may be contingent or unmatured and such deposits or indebtedness may be unmatured. Each Lender hereby acknowledges that the exercise by any Lender of offset, set-off, banker's lien, or similar rights against any deposit or other indebtedness of Borrower whether or not located in New York or any other state with certain laws restricting lenders from pursuing multiple collection methods, could result under such laws in significant impairment of the ability of all the Lenders to recover any further amounts in respect of the Loan. **Therefore, each Lender agrees that no Lender shall exercise any such right of set-off, banker's lien, or otherwise, against any assets of Borrower (including all general or special, time or demand, provisional or other deposits and other indebtedness owing by such Lender to or for the credit or the account of Borrower) without the prior written consent of Administrative Agent.**

(2) Each Lender shall promptly notify Lead Borrower and Administrative Agent after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lenders under this Section 12.25 are in addition to other rights and remedies (including other rights of set-off) which the Lenders may have.

(3) Each Lender agrees that it shall turn over to Administrative Agent any payment (whether voluntary or involuntary, through the exercise of any right of setoff or otherwise) on account of the Loans held by it in excess of its ratable portion (in accordance with this agreement and any separate agreement among Administrative Agent and the Lenders) of payments on account of the Loans obtained by all the Lenders.

Section 12.26 Limitation on Liability of Administrative Agent's and the Lenders' Officers, Employees, etc. Any obligation or liability whatsoever of Administrative Agent or any Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of Administrative Agent's or such Lender's respective assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Administrative Agent's or any Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 12.27 Cooperation with Syndication. Borrower acknowledges that Administrative Agent intends to syndicate a portion of the Commitments to one or more Lenders (the "**Syndication**") and in connection therewith, Borrower shall take all actions as Administrative Agent may reasonably request to assist Administrative Agent in its Syndication effort. Without limiting the generality of the foregoing, Borrower shall, at the request of Administrative Agent (i) facilitate the review of the Loans, the Project and the other collateral for the Loans by any prospective Lender; (ii) assist Administrative Agent and otherwise cooperate with Administrative Agent in the preparation of information offering materials (which assistance may include reviewing and commenting on drafts of such information materials and drafting portions thereof); (iii) deliver updated information on Borrower Parties, the Project and the other collateral for the Loans; (iv) make representatives of Borrower available to meet with prospective Lenders at tours of the Project and bank meetings; (v) facilitate direct contact

between the senior management and advisors of Borrower and any prospective Lender; and (vi) provide Administrative Agent with all information reasonably deemed necessary by it to complete the Syndication successfully. Subject to the provisions of Section 9.28, Borrower agrees to take such further reasonable action, in connection with documents and amendments to the Loan Documents, as may reasonably be required to effect such Syndication; provided, however, that notwithstanding any other provision of this Section 12.27 or Section 12.28 to the contrary, Borrower shall not be required to enter into any such documents and amendments which would alter any of the material economic terms of the Loan Documents or which would create new or greater obligations or liabilities on Borrower Parties under the Loan Documents.

Section 12.28 Severance of Loan.

(1) **Loan Components.** The Administrative Agent shall have the right, at any time, with respect to all or any portion of the Loan, to (a) cause the Notes, the Mortgages and the other Security Documents to be severed and/or split into two or more separate notes, mortgages and other security agreements, so as to evidence and secure one or more senior and subordinate mortgage loans, (b) create one more senior and subordinate notes (i.e., an A/B or A/B/C structure) secured by the Mortgages and the other Security Documents, (c) create multiple components of the Notes (and allocate or re-allocate the outstanding principal amount of the Loan among such components) or (d) otherwise sever the Loan into two or more loans secured by the Mortgages and the other Security Documents (each of clauses (a) through (d), together with the Mezzanine Option described below, a “**Bifurcation**”); in each such case, in whatever proportions and priorities as Administrative Agent may so direct in its discretion to Administrative Agent; provided, however, that in each such instance (i) the outstanding principal amount of all the Notes evidencing the Loan (or components of such Notes) immediately following such Bifurcation shall be equal to the outstanding principal amount of the Loan immediately prior to such Bifurcation, and (ii) the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the new notes immediately after such Bifurcation and at all times prior to the occurrence of any Event of Default shall not exceed the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the initial Notes delivered hereunder (as such interest rates are subject to being adjusted from time to time in accordance herewith, including as a result of the accrual of interest at the Default Rate). If requested by Administrative Agent in writing, Borrower shall execute within ten (10) days after such request, a severance agreement, amendments to or amendments and restatements of any one or more Loan Documents, and such documentation as Administrative Agent may reasonably request to evidence and/or effectuate any such Bifurcation, all in form and substance reasonably satisfactory to Administrative Agent.

(2) **Mezzanine Financing.** Administrative Agent shall have the right, at any time, to divide the Loan into two or more parts (the “**Mezzanine Option**”): a mortgage loan (the “**Mortgage Loan**”) and one or more Approved Mezzanine Loans. The principal amount of the Mortgage Loan plus the principal amount of the Approved Mezzanine Loan(s) shall equal the outstanding principal balance of the Loan immediately prior to the creation of the Mortgage Loan and the Approved Mezzanine Loan(s). In effectuating the foregoing, the Approved Mezzanine Lender will make a loan to a borrower (the “**Mezzanine Borrower(s)**”); Mezzanine Borrower(s) will contribute the amount of the Approved Mezzanine Loan(s) to Borrower (in its capacity as Borrower under the Mortgage Loan, “**Mortgage Borrower**”) and Mortgage

Borrower will apply the contribution to pay down the Loan to its Mortgage Loan amount (without prepayment premium). The Mortgage Loan and the Approved Mezzanine Loan(s) shall be on the same terms and subject to the same conditions set forth in this Agreement, the Notes, the Mortgages and the other Loan Documents except as follows:

(a) The Administrative Agent shall have the right, at any time, to establish different interest rates and debt service payments for the Mortgage Loan(s) and the Approved Mezzanine Loan and to require the payment of the Mortgage Loan and the Approved Mezzanine Loan(s) in such order of priority as may be designated by Administrative Agent; provided that (i) the total of the loan amounts for the Mortgage Loan and the Approved Mezzanine Loan(s) immediately following the creation of such Approved Mezzanine Loan(s) shall equal the amount of the Loan immediately prior to the creation of the Mortgage Loan and the Approved Mezzanine Loan(s), (ii) the weighted average Applicable Margin and/or Base Rate, as applicable, with respect to the Mortgage Loans and the Approved Mezzanine Loan immediately after such Bifurcation and at all times prior to the occurrence of any Event of Default shall not exceed the weighted average prior to such bifurcation, and (iii) there shall be no acceleration of amortization and the initial debt service payments on the Mortgage Loan note and the Approved Mezzanine Loan note(s) shall initially on the date created equal the debt service payment which was due under the Loan immediately prior to such bifurcation. The Approved Mezzanine Loan(s) shall be subordinate to the Mortgage Loan and shall be governed by the terms of an intercreditor agreement between the holders of the Mortgage Loan and the Approved Mezzanine Loan(s).

(b) Mezzanine Borrower(s) shall be a newly-formed special purpose, bankruptcy remote entity satisfactory to Administrative Agent, and shall own directly or indirectly one hundred percent (100%) of Mortgage Borrower. The security for the Approved Mezzanine Loan shall be a pledge of one hundred percent (100%) of the direct and indirect ownership interests in Mortgage Borrower.

(c) Mezzanine Borrower and Mortgage Borrower shall cooperate with all reasonable requests of Administrative Agent in order to convert the Loan into a Mortgage Loan and one or more Approved Mezzanine Loan(s) and shall execute and deliver such documents as shall reasonably be required by Administrative Agent in connection therewith, including, without limitation, (i) the modification of organizational documents and loan documents, (ii) documents authorizing Administrative Agent to file any UCC 1 Financing Statements reasonably required by Administrative Agent to perfect the security interest in the collateral for the Approved Mezzanine Loan(s), (iii) execution of such other documents reasonably required by Administrative Agent in connection with the creation of the Approved Mezzanine Loan(s), including, without limitation, an environmental indemnity substantially similar in form and substance to the Environmental Indemnity Agreement delivered on the date hereof in connection with the Loan, (iv) delivery of appropriate authorization and enforceability opinions with respect to the Approved Mezzanine Loan(s), and (v) delivery of an "Eagle 9" or equivalent UCC title insurance policy, satisfactory to Administrative Agent, insuring the perfection and priority of the lien on the Approved Mezzanine Loan collateral; provided, however, that notwithstanding any other provision of Section 12.27 or this Section 12.28(2) to the contrary, Borrower shall not be required to enter into any such documents and amendments which would alter any of the material economic terms of the Loan Documents or which would

create new or greater obligations or liabilities Borrower or Borrower Parties under the Loan Documents

Section 12.29 Confidentiality. Each of Administrative Agent and the Lenders and Borrower Parties and Sponsor agrees to maintain the confidentiality of the Confidential Information, except that Confidential Information may be disclosed (a) to it and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made shall be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority, (c) to the extent required by Applicable Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) to any assignee or pledgee of or Participant in, or any prospective assignee or pledgee of or Participant in, any of its rights or obligations under this Agreement or any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, (g) with the consent of Borrower or Administrative Agent, as applicable, or (h) to the extent such Confidential Information (i) becomes publicly available other than as a result of a breach of this Section 12.29 or of arrangements entered into pursuant hereto or (ii) becomes available to such party from a source other than Borrower or its Affiliates or the Administrative Agent or the Lender or their Affiliates, as applicable; provided, however, the obligation to maintain the confidentiality of the Confidential Information provided hereunder shall expire twelve (12) months after the date upon which the Loans hereunder are indefeasibly paid in full. Administrative Agent and each Lender, to the extent required to maintain the confidentiality of Information as provided in this Section 12.29, shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Confidential Information as a commercial banker exercising reasonable and customary business practices would accord to its own confidential information. Notwithstanding anything herein to the contrary, the information subject to this Section 12.29 shall not include, and Administrative Agent and each Lender may disclose without limitation of any kind, any information with respect to the "tax treatment" and "tax structure" (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to Administrative Agent or such Lender relating to such tax treatment and tax structure. For purposes of this Section 12.29, the information that shall be treated as Confidential Information shall mean, in the case of Administrative Agent and the Lenders, written non-public information concerning the Project and, in the case of Borrower, information concerning the terms and conditions set forth in the Loan Documents.

ARTICLE 13

RECOURSE LIABILITY

Section 13.1 Recourse Liability(1) . No past, present or future member, or any past, present or future shareholder, partner, member, officer, employee, servant, executive, director, agent, authorized representative or Affiliate of Borrower or any member of Borrower, (each such

Person, an “**Exculpated Party**”) shall be personally liable for payments due hereunder or under any other Loan Document or for the performance of any obligation, or breach of any representation or warranty made by Borrower hereunder or thereunder. The sole recourse of the Lenders and Administrative Agent for satisfaction of the obligations of Borrower hereunder and under any other Loan Document shall be against Borrower and its assets and not against any assets or property of any such Exculpated Party other than the direct or indirect ownership interest of such Exculpated Party in Borrower. In the event that a Potential Default or Event of Default occurs in connection with such obligations, no action shall be brought against any such Exculpated Party by virtue of its direct or indirect ownership interest in Borrower. In the event of foreclosure or other sale or disposition of the Project, no judgment for any deficiency upon the obligations hereunder or under any other Loan Document shall be obtainable by the Lenders or Administrative Agent against any such Exculpated Party. Notwithstanding the foregoing, nothing in this Section 13.1 shall affect or diminish the obligations of Borrower or Guarantors under or in respect of each Loan Document to which it is a party, including Guarantor Documents (including the right to name any Guarantor in any foreclosure action in connection with its obligations under the Guarantor Documents) and the Co-Borrower Documents. Notwithstanding the foregoing provisions of this Section 13.1, each Exculpated Party shall be personally (and on a full recourse basis) liable for and shall indemnify and defend Administrative Agent and the Lenders from and against, and shall hold Administrative Agent and the Lenders harmless of, from and against any deficiency, liability, loss, damage, costs, and expenses (including legal fees and disbursements) suffered by Administrative Agent and/or the Lenders and caused by, or arising out of or as a result of any of the following: (i) such Person’s commission of a criminal act, (ii) such Person’s failure to comply with the provisions of the Loan Documents prohibiting a transfer or Change of Control; (iii) such Person’s misappropriation of any cash flow or other revenue derived from or in respect of the Project, including security deposits, insurance proceeds, condemnation awards, or any rental, sales or other income derived directly or indirectly from the Project, or the misapplication of any of the foregoing sums, in either event, in contravention of any provision of this Agreement or the other Loan Documents; (iv) such Person’s fraud or misrepresentation or inaccurate certification made at any time in connection with the Loan Documents or the Loans; (v) such Person’s intentional interference with Administrative Agent’s (or the Lenders’) exercise of its rights under any of the Loan Documents; (vi) such Person’s intentional destruction or removal of fixtures or personal property securing the Loans unless replaced by items of equal value and utility; (vii) such Person’s misapplication or misappropriation of funds disbursed from the Security Accounts or the Controlled Accounts; (viii) such Person’s commissions of intentional waste to or of the Project or any portion thereof or failure to maintain the Project in the manner required by the Loan Documents; (ix) failure to maintain the insurance coverage required by the Loan Documents; (x) failure to pay taxes, assessments and any other charges, including, without limitation, charges for labor or materials, which could result in prior liens against any portion of the Project; (xi) willful misconduct; (xii) Borrower files a voluntary petition under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xiii) such Person files or joins in the filing of, or solicits or acts in concert with, or colludes or conspires with petitioning creditors with respect to, an involuntary petition against Borrower under the Federal Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (xiv) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Federal Bankruptcy Code or any other Federal or

state bankruptcy or insolvency law; (xv) such Person consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Project; (xvi) Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; or (xvii) Borrower violates any of the provisions set forth in the definition of Single Purpose Entity and such violation results in a substantive consolidation of the Borrower or its assets in the bankruptcy of an Affiliate.

Section 13.2 No Waiver of Certain Rights. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, (A) neither of Administrative Agent nor the Lenders shall be deemed to have waived any right which Administrative Agent or any Lender may have under Sections 506(a), 506(b), 1111(b) or any other provision of the Federal Bankruptcy Code, as such sections may be amended, to file a claim for the full amount due to Administrative Agent or such Lender under the Loan Documents or to require that all collateral shall continue to secure the amounts due under the Loan Documents and (B) Administrative Agent may pursue any power of sale, bring any foreclosure action, any action for specific performance, or any other appropriate action or proceedings against Borrower or any other Person for the purpose of enabling the Administrative Agent and the Lenders to realize upon the collateral for the Loans (including, without limitation, any Net Operating Income to the extent provided for in the Loan Documents) or to obtain the appointment of a receiver.

ARTICLE 14

ADMINISTRATIVE AGENT

Section 14.1 Appointment, Powers and Immunities. Each Lender hereby appoints and authorizes Administrative Agent to act as its agent hereunder and under the other Loan Documents with such powers as are specifically delegated to Administrative Agent by the terms of this Agreement and of the other Loan Documents, together with such other powers as are reasonably incidental thereto. Administrative Agent (which term as used in this sentence and in Section 14.5 and the first sentence of Section 14.6 shall include reference to its Affiliates and its own and its Affiliates' officers, directors, employees and agents):

(a) shall have no duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents, and shall not by reason of this Agreement or any other Loan Document be a trustee for any Lender except to the extent that Administrative Agent acts as an agent with respect to the receipt or payment of funds, nor shall Administrative Agent have any fiduciary duty to Borrower nor shall any Lender have any fiduciary duty to Borrower or any other Lender;

(b) shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in this Agreement or in any other Loan Document, or in any certificate or other document referred to or provided for in, or received by any of them under, this Agreement or any other Loan Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of the Loan Documents or any other document referred to or provided for therein or for any failure by Borrower or any other Person to perform any of its obligations thereunder; and

(c) shall not be responsible for any action taken or omitted to be taken by it under any Loan Document or under any other document or instrument referred to or provided for therein or in connection therewith, except to the extent any such action taken or omitted violates Administrative Agent's standard of care set forth in the first sentence of Section 14.5.

(d) shall not, except to the extent expressly instructed by the Majority Lenders with respect to collateral security under the Security Documents, be required to initiate or conduct any litigation or collection proceedings hereunder or under any other Loan Document; and

(e) shall not be required to take any action which is contrary to the Loan Documents or Applicable Law.

The relationship between Administrative Agent and each Lender is a contractual relationship only, and nothing herein shall be deemed to impose on Administrative Agent any obligations other than those for which express provision is made herein or in the other Loan Documents. Administrative Agent may employ agents and attorneys, and may delegate all or any part of its obligations hereunder, to third parties and shall not be responsible for the negligence or misconduct of any such agents, attorneys in fact or third parties selected by it in good faith. Administrative Agent may deem and treat the payee of a Note as the holder thereof for all purposes hereof unless and until a notice of the assignment or transfer thereof shall have been filed with Administrative Agent, any such assignment or transfer to be subject to the provisions of Section 12.23. Except to the extent expressly provided in Section 14.8, the provisions of this Article 14 are solely for the benefit of Administrative Agent and the Lenders, and Borrower shall not have any rights as a third-party beneficiary of any of the provisions hereof and the Lenders may modify or waive such provisions of this Article 14 in their sole and absolute discretion.

Section 14.2 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including, without limitation, any thereof by telephone, telecopy, telegram or cable) reasonably believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or thereunder in accordance with instructions given by the Majority Lenders, and such instructions of the Majority Lenders and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

Section 14.3 Defaults.

(1) Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Potential Default or Event of Default unless Administrative Agent has received notice from a Lender or Lead Borrower specifying such Potential Default or Event of Default and stating that such notice is a "**Notice of Default**." In the event that Administrative Agent receives such a notice of the occurrence of a Potential Default or Event of Default, Administrative Agent shall give prompt notice thereof to the Lenders. Within ten (10) days of

delivery of such notice of Potential Default or Event of Default from Administrative Agent to the Lenders (or such shorter period of time as Administrative Agent determines is necessary), Administrative Agent and the Lenders shall consult with each other to determine a proposed course of action. Administrative Agent shall (subject to Section 14.7) take such action with respect to such Potential Default or Event of Default as shall be directed by the Majority Lenders, provided that, (A) unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, including decisions (1) to make protective advances that Administrative Agent determines are necessary to protect or maintain the Project and (2) to foreclose on any of the Project or exercise any other remedy, with respect to such Potential Default or Event of Default as it shall deem advisable in the interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of all of the Lenders and (B) no actions approved by the Majority Lenders shall violate the Loan Documents or Applicable Law. Each of the Lenders acknowledges and agrees that no individual Lender may separately enforce or exercise any of the provisions of any of the Loan Documents (including the Notes) other than through Administrative Agent. Administrative Agent shall advise the Lenders of all material actions which Administrative Agent takes in accordance with the provisions of this Section 14.3(1) and shall continue to consult with the Lenders with respect to all of such actions. Notwithstanding the foregoing, if the Majority Lenders shall at any time direct that a different or additional remedial action be taken from that already undertaken by Administrative Agent, including the commencement of foreclosure proceedings, such different or additional remedial action shall be taken in lieu of or in addition to, the prosecution of such action taken by Administrative Agent; provided that all actions already taken by Administrative Agent pursuant to this Section 14.3(1) shall be valid and binding on each Lender. All money (other than money subject to the provisions of Section 14.7) received from any enforcement actions, including the proceeds of a foreclosure sale of the Project, shall be applied, first, to the payment or reimbursement of Administrative Agent for expenses incurred in accordance with the provisions of Sections 14.3(2), (3) and (4) and 14.5 and to the payment of the Agency Fee to the extent not paid by Borrower pursuant to Section 14.11, second, to the payment or reimbursement of the Lenders for expenses incurred in accordance with the provisions of Section 14.3(2), (3) and (4) and 14.5; third, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 14.3(2); and fourth, to the Lenders in accordance with their respective Proportionate Shares (and, if applicable, to Eurohypo Counterparty under any Hedge Agreement for its Additional Interest in accordance with Section 9.15), unless an Unpaid Amount is owed pursuant to Section 14.12, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender.

(2) All losses with respect to interest (including interest at the Default Rate) and other sums payable pursuant to the Notes or incurred in connection with the Loans shall be borne by the Lenders in accordance with their respective proportionate shares of the Loans. All losses incurred in connection with the Loans, the enforcement thereof or the realization of the security therefor, shall be borne by the Lenders in accordance with their respective proportionate shares of the Loan, and the Lenders shall promptly, upon request, remit to Administrative Agent their respective proportionate shares of (i) any expenses incurred by Administrative Agent in connection with any Default to the extent any expenses have not been paid by Borrower, (ii) any advances made to pay taxes or insurance or otherwise to preserve the Lien of the Security

Documents or to preserve and protect the Project, whether or not the amount necessary to be advanced for such purposes exceeds the amount of the Mortgages, (iii) any other expenses incurred in connection with the enforcement of the Mortgages or other Loan Documents, and (iv) any expenses incurred in connection with the consummation of the Loans not paid or provided for by Borrower. To the extent any such advances are recovered in connection with the enforcement of the Mortgages or the other Loan Documents, each Lender shall be paid its proportionate share of such recovery after deduction of the expenses of Administrative Agent and the Lenders.

(3) If, at the direction of the Majority Lenders or otherwise as provided in Section 14.3(1), any action(s) is brought to collect on the Notes or enforce the Security Documents or any other Loan Document, such action shall (to the extent permitted under Applicable Law and the decisions of the court in which such action is brought) be an action brought by Administrative Agent and the Lenders, collectively, to collect on all or a portion of the Notes or enforce the Security Documents or any other Loan Document and counsel selected by Administrative Agent shall prosecute any such action on behalf of Administrative Agent and the Lenders, and Administrative Agent and the Lenders shall consult and cooperate with each other in the prosecution thereof. All decisions concerning the appointment of a receiver while such action is pending, the conduct of such receivership, the conduct of such action, the collection of any judgment entered in such action and the settlement of such action shall be made by Administrative Agent. The costs and expenses of any such action shall be borne by the Lenders in accordance with each of their respective proportionate shares.

(4) If, at the direction of the Majority Lenders or otherwise as provided in Section 14.3(1), any action(s) is brought to foreclose the Mortgages, such action shall (to the extent permitted under Applicable Law and the decisions of the court in which such action is brought) be an action brought by Administrative Agent and the Lenders, collectively, to foreclose all or a portion of the Mortgages and collect on the Notes. Counsel selected by Administrative Agent shall prosecute any such foreclosure on behalf of Administrative Agent and the Lenders and Administrative Agent and the Lenders shall consult and cooperate with each other in the prosecution thereof. All decisions concerning the appointment of a receiver, the conduct of such foreclosure, the acceptance of a deed in lieu of foreclosure, the bid on behalf of Administrative Agent and the Lenders at the foreclosure sale of the Project, the manner of taking and holding title to the Project (other than as set forth in subsection (5) below), the sale of the Project after foreclosure, and the commencement and conduct of any deficiency judgment proceeding shall be made by Administrative Agent. The costs and expenses of foreclosure will be borne by the Lenders in accordance with their respective proportionate shares.

(5) If title is acquired to the Project after a foreclosure sale or by a deed in lieu of foreclosure, title shall be held by Administrative Agent in its own name in trust for the Lenders or, at Administrative Agent's election, in the name of a wholly owned subsidiary of Administrative Agent, on behalf of the Lenders, or a subsidiary wholly owned by the Lenders and managed by the Administrative Agent.

(6) If Administrative Agent (or its subsidiary) acquires title to the Project or is entitled to possession of the Project during or after the foreclosure, all material decisions with respect to the possession, ownership, development, construction, control, operation, leasing,

management and sale of the Project shall be made by Administrative Agent. All income or other money received after so acquiring title to or taking possession of the Project with respect to the Project, including income from the operation and management of the Project and the proceeds of a sale of the Project, shall be applied (subject to the terms of any separate agreement among Administrative Agent and the Lenders), first, to the payment or reimbursement of Administrative Agent and the expenses incurred in accordance with the provisions of this Article 14 and to the payment of the Agency Fee to the extent not paid by Borrower pursuant to Section 14.11, second, to the payment of operating expenses with respect to the Project; third, to the establishment of reasonable reserves for the operation of the Project; fourth, to the payment or reimbursement of the Lenders for any advances made pursuant to Section 14.3(2); fifth, to fund any capital improvement, leasing and other reserves; and sixth, to the Lenders in accordance with their respective Proportionate Shares (and, if applicable, to Eurohypo Counterparty under any Hedge Agreement for its Additional Interest in accordance with Section 9.15), unless an Unpaid Amount is owed pursuant to Section 14.12, in which event such Unpaid Amount shall be deducted from the portion of such proceeds of the Defaulting Lender and be applied to payment of such Unpaid Amount to the Special Advance Lender.

Section 14.4 Rights as a Lender. With respect to its Commitment and the Loans made by it Eurohypo (and any successor acting as Administrative Agent) in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Administrative Agent, and the term “Lender” or “Lenders” shall, unless the context otherwise indicates, include Administrative Agent in its individual capacity. Eurohypo (and any successor acting as Administrative Agent) and its Affiliates may (without having to account therefor to any Lender) lend money to, make investments in and generally engage in any kind of lending, trust or other business with Borrower (and any of its Affiliates) as if it were not acting as Administrative Agent, and Eurohypo and its Affiliates may accept fees and other consideration from Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

Section 14.5 Standard of Care; Indemnification. In performing its duties under the Loan Documents, Administrative Agent will exercise the same degree of care as it normally exercises in connection with real estate loans that it syndicates and administers, but Administrative Agent shall have no further responsibility to any Lender except as expressly provided herein and except for its own gross negligence or willful misconduct which resulted in actual loss to such Lender, and, except to such extent, Administrative Agent shall have no responsibility to any Lender for the failure by Administrative Agent to comply with any of Administrative Agent’s obligations to Borrower under the Loan Documents or otherwise. Subject to the terms of any separate agreement among Administrative Agent and the Lenders, the Lenders agree to indemnify Administrative Agent (to the extent not reimbursed under Section 9.28, but without limiting the obligations of Borrower under Section 9.28) ratably in accordance with the aggregate principal amount of the Loans held by the Lenders (or, if no Loans are at the time outstanding, ratably in accordance with their respective Commitments), for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against Administrative Agent (including by any Lender) arising out of or by reason of any investigation in or in any way relating to or arising out of this Agreement or any other Loan

Document or any other documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses that Borrower is obligated to pay under Section 9.28, but excluding, unless an Event of Default has occurred and is continuing, normal administrative costs and expenses incident to the performance of its agency duties hereunder) or the enforcement of any of the terms hereof or thereof or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent they arise from Administrative Agent's breach of its standard of care set forth in the first sentence of this Section.

Section 14.6 Non Reliance on Administrative Agent and Other Lenders. Each Lender agrees that it has, independently and without reliance on Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrower and its Affiliates and decision to enter into this Agreement and that it will, independently and without reliance upon Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or under any other Loan Document. Subject to the provisions of the first sentence of Section 14.5, Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any of the other Loan Documents or any other document referred to or provided for herein or therein or to inspect the Project or the books of Borrower or any of its Affiliates. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by Administrative Agent hereunder or as otherwise agreed by Administrative Agent and the Lenders, Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of Borrower or any of its Affiliates that may come into the possession of Administrative Agent or any of its Affiliates.

Section 14.7 Failure to Act. Except for action expressly required of Administrative Agent hereunder, and under the other Loan Documents, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder and thereunder unless it shall receive further assurances to its satisfaction from the Lenders of their indemnification obligations under Section 14.5 against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action.

Section 14.8 Resignation of Administrative Agent. Administrative Agent may resign at any time by giving notice thereof to the Lenders and Lead Borrower. Upon any such resignation, the Majority Lenders shall have the right to appoint a successor Administrative Agent that shall be a Person that meets the qualifications of an Eligible Assignee. If no successor Administrative Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, that shall be an institutional lender that meets the requirements of the immediately preceding sentence. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder (if not

already discharged therefrom as provided above in this Section 14.8). The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provision of this Article 14 and Section 9.28 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

Section 14.9 Consents under Loan Documents. Administrative Agent may (without any Lender's consent) give or withhold its agreement to any amendments of the Loan Documents or any waivers or consents in respect thereof or exercise or refrain from exercising any other rights or remedies which Administrative Agent may have under the Loan Documents or otherwise provided that such actions do not, in Administrative Agent's reasonable judgment, materially adversely affect the value of any collateral, taken as a whole, or represent a departure from Administrative Agent's standard of care described in Section 14.5, except that, except as otherwise provided in any separate agreement entered into among Administrative Agent and the Lenders, Administrative Agent shall not agree to the following (provided that no Lender's consent shall be required for any of the following which are otherwise required or contemplated under the Loan Documents):

- (a) increase the Commitment of any Lender without the consent of such Lender;
- (b) reduce the principal amount of the Loans or reduce the interest rate thereon without the consent of each Lender affected thereby;
- (c) extend any stated payment date for principal of or interest on the Loans payable to any Lender without the consent of each Lender affected thereby;
- (d) release Borrower, any Guarantor or any other party from liability under the Loan Documents (except for any assigning Lender pursuant to Section 12.23 and any resigning Administrative Agent pursuant to Section 14.8) without the consent of each Lender (except that no such consent shall be required, and Administrative Agent is hereby authorized, to release Borrower and Guarantors (A) as expressly provided in the Loan Documents and (B) upon payment of the Obligations in full in accordance with the terms of the Loan Documents);
- (e) release or subordinate in whole or in part any material portion of the collateral given as security for the Loans without the consent of each Lender (except that no such consent shall be required, and Administrative Agent is hereby authorized, to release any Lien covering the collateral under the Security Documents (A) as expressly provided in the Loan Documents and (B) upon payment of the Obligations in full in accordance with the terms of the Loan Documents);
- (f) modify any of the provisions of this Section 14.9, the definition of "Majority Lenders" or any other provision in the Loan Documents specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder without the consent of each Lender;

(g) modify the terms of any Event of Default without the consent of each Lender; or

(h) consent to (i) the sale, transfer or encumbrance of any portion of the Project (or any interest therein) or any direct or indirect ownership interest therein and (ii) the incurrence by Borrower of any additional indebtedness secured by the Project, in each case to the extent such consent is required under the Loan Documents (and subject to any standard of reasonability set forth therein) without the consent of each Lender.

Notwithstanding anything to the contrary contained in this Agreement, (a) any modification or supplement of Article 14, or of any of the rights or duties of Administrative Agent hereunder, shall require the consent of Administrative Agent and (b) in the case of Change Orders, the Lenders hereby authorize Administrative Agent (on behalf of the Lenders) to modify the Loan Documents to the extent reasonably necessary to comply with the requirements of the Lien Law in connection therewith and (y) Administrative Agent is hereby authorized to enter into modifications or amendments to the Loan Documents which are ministerial in nature, including the preparation and execution of Uniform Commercial Code forms, Assignments and Assumptions and subordination and non-disturbance agreements with tenants at the Project. If Administrative Agent solicits any consents or approvals from the Lenders under any of the Loan Documents, each Lender shall within ten (10) Business Days of receiving such request, give Administrative Agent written notice of its consent or approval or denial thereof; provided that, if any Lender does not respond within such ten (10) Business Days, such Lender shall be deemed to have authorized Administrative Agent to vote such Lender's interest with respect to the matter which was the subject of Administrative Agent's solicitation as Administrative Agent elects. Any such solicitation by Administrative Agent for a consent or approval shall be in writing and shall include a description of the matter or thing as to which such consent or approval is requested and shall include Administrative Agent's recommended course of action or determination in respect thereof.

Section 14.10 Authorization. Administrative Agent is hereby authorized by the Lenders to execute, deliver and perform in accordance with the terms of each of the Loan Documents to which Administrative Agent is or is intended to be a party and each Lender agrees to be bound by all of the agreements of Administrative Agent contained in such Loan Documents. Borrower shall be entitled to rely on all written agreements, approvals and consents received from Administrative Agent as being that also of the Lenders, without obtaining separate acknowledgment or proof of authorization of same.

Section 14.11 Agency Fee. So long as the Commitments are in effect and until payment in full of all obligations under this Agreement, the Notes and the other Loan Documents, Borrower shall pay to Administrative Agent, for its sole account, the Agency Fee. The Agency Fee shall be payable annually in advance commencing on the Closing Date pursuant to the Fee Letter.

Section 14.12 Defaulting Lenders.

(1) If any Lender (a "**Defaulting Lender**") shall for any reason fail to (i) make any respective Loan required pursuant to the terms of this Agreement or (ii) pay its

proportionate share of an advance or disbursement to protect the Project or the Lien of the Security Documents, any of the other Lenders may, but shall not be obligated to, make all or a portion of the Defaulting Lender's Loan or proportionate share of such advance, provided that such Lender gives the Defaulting Lender and Administrative Agent prior notice of its intention to do so. The right to make such advances in respect of the Defaulting Lender shall be exercisable first by the Lender holding the greatest proportionate share and thereafter to each of the Lenders in descending order of their respective proportionate shares of the Loans or in such other manner as the Majority Lenders (excluding the Defaulting Lender) may agree on. Any Lender making all or any portion of the Defaulting Lender's proportionate share of the applicable Loan or advance in accordance with the foregoing terms and conditions shall be referred to as a "**Special Advance Lender**."

(2) In any case where a Lender becomes a Special Advance Lender (i) the Special Advance Lender shall be deemed to have purchased, and the Defaulting Lender shall be deemed to have sold, a senior participation in the Defaulting Lender's respective Loan to the extent of the amount so advanced or disbursed (the "**Advanced Amount**") bearing interest (including interest at the Default Rate, if applicable) and (ii) the Defaulting Lender shall have no voting rights under this Agreement or any other Loan Documents so long as it is a Defaulting Lender. It is expressly understood and agreed that each of the respective obligations under this Agreement and the other Loan Documents, including advancing Loans, losses incurred in connection with the Loan, costs and expenses of enforcement, advancing to preserve the Lien of the Mortgages or to preserve and protect the Project, shall be without regard to any adjustment in the proportionate shares occasioned by the acts of a Defaulting Lender. The Special Advance Lender shall be entitled to an amount (the "**Unpaid Amount**") equal to the applicable Advanced Amount, plus any unpaid interest due and owing with respect thereto, less any repayments thereof made by the Defaulting Lender immediately upon demand. The Defaulting Lender shall have the right to repurchase the senior participation in its Loan from the Special Advance Lender at any time by the payment of the Unpaid Amount.

(3) A Special Advance Lender shall (i) give notice to the Defaulting Lender, Administrative Agent and each of the other Lenders (provided that failure to deliver said notice to any party other than the Defaulting Lender shall not constitute a default under this Agreement) of the Advance Amount and the percentage of the Special Advance Lender's senior participation in the Defaulting Lender's Loan and (ii) in the event of the repayment of any of the Unpaid Amount by the Defaulting Lender, give notice to the Defaulting Lender and Administrative Agent of the fact that the Unpaid Amount has been repaid (in whole or in part), the amount of such repayment and, if applicable, the revised percentage of the Special Advance Lender's senior participation. Provided that Administrative Agent has received notice of such participation, Administrative Agent shall have the same obligations to distribute interest, principal and other sums received by Administrative Agent with respect to a Special Advance Lender's senior participation as Administrative Agent has with respect to the distribution of interest, principal and other sums under this Agreement; and at the time of making any distributions to the Lenders, shall make payments to the Special Advance Lender with respect to a Special Advance Lender's senior participation in the Defaulting Lender's Loan out of the Defaulting Lender's share of any such distributions.

(4) A Defaulting Lender shall immediately pay to a Special Advance Lender all sums of any kind paid to or received by the Defaulting Lender from Borrower, whether pursuant to the terms of this Agreement or the other Loan Documents or in connection with the realization of the security therefor until the Unpaid Amount is fully repaid. Notwithstanding the fact that the Defaulting Lender may temporarily hold such sums, the Defaulting Lender shall be deemed to hold same as a trustee for the benefit of the Special Advance Lender, it being the express intention of the Lenders that the Special Advance Lender shall have an ownership interest in such sums to the extent of the Unpaid Amount.

(5) Each Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all losses, damages, liabilities or expenses (including reasonable attorneys' fees and expenses and interest at the Default Rate) which they may sustain or incur by reason of the Defaulting Lender's failure or refusal to abide by its obligations under this Agreement or the other Loan Documents, except to the extent a Defaulting Lender became a Defaulting Lender due to the gross negligence or willful misconduct of Administrative Agent and/or any Lender. Administrative Agent shall, after payment of any amounts due to any Special Advance Lender pursuant to the terms of subsection (3) above, set-off against any payments due to such Defaulting Lender for the claims of Administrative Agent and the other Lenders pursuant to this indemnity.

(6) In the event any Lender becomes a Defaulting Lender and none of the other Lenders elects to be a Special Advance Lender pursuant to subsection (1) above, Borrower shall have the right, at any time prior to the Completion Date, provided that no Potential Default or Event of Default exists, to cause another financial institution, reasonably acceptable to (x) the Majority Lenders if such institution is not an Eligible Assignee or (y) Administrative Agent if such institution is an Eligible Assignee, to assume Defaulting Lender's obligations with respect to the Advance Amount on the then-existing terms and conditions of the Loan Documents (such replacement institution, a "**Replacement Lender**"). Such assumption shall be pursuant to a written instrument reasonably satisfactory to administrative Agent. Upon such assumption, the Replacement Lender shall become a "Lender" for all purposes hereunder, with a Commitment in an amount equal to the Advance Amount, and the Defaulting Lender's Commitment shall automatically be reduced by the Advance Amount. In connection with the foregoing, Borrower shall execute and deliver to the Replacement Lender and the Defaulting Lender substitute notes substantially in the form of Exhibit C and stating: "This Note is a substitute note as contemplated by Section 14.12 of the Agreement; it replaces and is in lieu of that certain note made by Maker dated [date of Note] to the order of [Defaulting Lender] in the principal sum of [Defaulting Lender's original Commitment]." Such substitute notes shall be in amounts equal to, in the case of the Replacement Lender's note, the Advance Amount and, in the case of the Defaulting Lender's note, its Commitment as reduced aforesaid. Such substitute notes shall constitute "Notes" and the obligations evidenced by such substitute notes shall be secured by the Mortgages. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite partnership/limited liability company/corporate action to authorize Borrower's execution and delivery of the substitute notes and any related documents. Upon delivery of the foregoing substitute notes, each Defaulting Lender shall return to Borrower its note which was replaced, provided that the delivery of a substitute note to the Defaulting Lender pursuant to this Section 14.12 shall operate to void and replace the note previously held by the Defaulting Lender

regardless of whether Defaulting Lender returns the same as required hereby. Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with the substitution of Lenders in accordance with the foregoing provisions of this Section. Lenders shall reasonably cooperate with Borrower's attempts to obtain a Replacement Lender, but they shall not be obligated to modify the Loan Documents in connection therewith, other than modifications pursuant to the immediately preceding sentence.

Section 14.13 Liability of Administrative Agent. Administrative Agent shall not have any liabilities or responsibilities to Borrower on account of the failure of any Lender (other than Administrative Agent in its capacity as a Lender) to perform its obligations hereunder or to any Lender on account of the failure of Borrower to perform its obligations hereunder or under any other Loan Document.

Section 14.14 Transfer of Agency Function. Without the consent of Borrower or any Lender, Administrative Agent may at any time or from time to time transfer its functions as Administrative Agent hereunder to any of its offices wherever located in the United States; provided that Administrative Agent shall promptly notify Lead Borrower and the Lenders thereof.

ARTICLE 15

CASH MANAGEMENT

Section 15.1 Cash Management.

(1) Upon the occurrence of an Event of Default and continuing until the Maturity Date, Borrower and Borrower's Managing Member shall (a) enter into and thereafter comply with the Cash Management Agreement and (b) continuing until ninety (90) days after the date that such Event of Default has been cured, cause all tenants in the Improvements to remit all rental and other payments due under their respective leases into a sweep account established in accordance with the Cash Management Agreement (the "**Sweep Account**"). The insufficiency of funds on deposit in any account established pursuant to the Cash Management Agreement shall not absolve Borrower of the obligation to make any payments as and when due pursuant to this Agreement or the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(2) Administrative Agent, in its sole discretion, may, on a monthly basis, release from the Sweep Account an amount equal to the monthly Operating Expenses pursuant to an Approved Annual Budget. After such release of funds described in the preceding sentence, Administrative Agent, may, in its sole discretion, release any remaining funds to pay for interest on the Loans and for Project Costs.

Section 15.2 Security Accounts Generally.

(1) **Grant of Security Interest.** Borrower hereby grants a perfected first priority security interest in favor of Administrative Agent for the ratable benefit of the Lenders in each Security Account established by or for it hereunder and all financial assets and other

property and sums at any time held, deposited or invested therein, and all security entitlements and investment property relating thereto, together with any interest or other earnings thereon, and all proceeds thereof, whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities (collectively, "**Security Account Collateral**"), together with all rights of a secured party with respect thereto (even if no further documentation is requested by Administrative Agent or the Lenders or executed by Borrower).

(2) **Borrower Covenants.** Borrower covenants and agrees:

(a) to do all acts that may be reasonably necessary to maintain, preserve and protect Security Account Collateral;

(b) to pay promptly when due all material taxes, assessments, charges, encumbrances and liens now or hereafter imposed upon or affecting any Security Account Collateral;

(c) to appear in and defend any action or proceeding which may materially and adversely affect Borrower's title to or Administrative Agent's interest in the Security Account Collateral;

(d) following the creation of each Security Account established by or for Borrower and the initial funding thereof, other than to Administrative Agent pursuant to the Cash Management Agreement or this Agreement, not to transfer, assign, sell, surrender, encumber, mortgage, hypothecate, or otherwise dispose of any of the Security Account Collateral or rights or interests therein, and to keep the Security Account Collateral free of all levies and security interests or other liens or charges except the security interest in favor of Administrative Agent granted hereunder;

(e) to account fully for and promptly deliver to Administrative Agent, in the form received, all documents, chattel paper, instruments and agreements constituting the Security Account Collateral hereunder, endorsed to Administrative Agent or in blank, as requested by Administrative Agent, and accompanied by such powers as appropriate and until so delivered all such documents, instruments, agreements and proceeds shall be held by Borrower in trust for Administrative Agent, separate from all other property of Borrower; and

(f) from time to time upon request by Administrative Agent, to furnish such further assurances of Borrower's title with respect to the Security Account Collateral, execute such written agreements, or do such other acts, all as may be reasonably necessary to effectuate the purposes of this agreement or as may be required by law, or in order to perfect or continue the first-priority lien and security interest of Administrative Agent in the Security Account Collateral.

(3) **Rights on Event of Default.** Upon the occurrence and during the continuance of an Event of Default, Administrative Agent, at its option, may withdraw the funds in any Security Account and apply such funds to the items for which the Security Accounts were established or to payment of the Loans in such order, proportion and priority as Administrative Agent may determine in its discretion. Administrative Agent's right to withdraw and apply such

funds shall be in addition to all other rights and remedies provided to Administrative Agent on behalf of the Lenders under the Cash Management Agreement and the other Loan Documents.

(4) **Prohibition Against Further Encumbrance.** Borrower shall not, without the prior written consent of Administrative Agent, further pledge, assign or grant any security interest in the Security Account Collateral or permit any Lien to attach thereto, or any levy to be made thereon, or any Uniform Commercial Code financing statements, except those naming Administrative Agent on behalf of the Lenders as the secured party, to be filed with respect thereto.

(5) **Release of Funds in Security Accounts.** Any amount remaining in the Security Accounts after the Loans have been paid in full shall promptly be returned to the Lead Borrower.

ARTICLE 16

CONTROLLED ACCOUNTS

Section 16.1 Controlled Accounts. Borrower hereby agrees with Administrative Agent, as to any Controlled Account into which this Agreement requires Borrower to deposit funds, as follows:

(1) **Establishment and Maintenance of the Controlled Account.**

(a) Each Controlled Account (i) shall be established at, and a separate and identifiable account from all other funds held by, a Depository Bank and (ii) shall contain only funds required to be deposited pursuant to this Agreement or any other Loan Document. Any interest which may accrue on the amounts on deposit in a Controlled Account shall be added to and shall become part of the balance of such Controlled Account. Borrower, Administrative Agent and the applicable Depository Bank shall enter into an agreement (a "**Controlled Account Agreement**"), substantially in the form of Exhibit G attached hereto (with such changes thereto as may be required by such Depository Bank and satisfactory to Administrative Agent) which shall govern such Controlled Account and the rights, duties and obligations of each party to such Controlled Account Agreement.

(b) Each Controlled Account shall be established in the name of Administrative Agent, as agent for the Lenders and shall be subject to the sole dominion, control and discretion of Administrative Agent, provided, however that Administrative Agent shall act in accordance with the provisions of this Agreement. Neither Borrower nor any other Person, including, without limitation, any Person claiming on behalf of or through Borrower, shall have any right or authority, whether express or implied, to make use of or withdraw, or cause the use or withdrawal of, any proceeds from any Controlled Account or any of the other proceeds deposited therein, except as expressly provided in this Agreement or in the applicable Controlled Account Agreement.

(2) **Deposits to and Disbursements from the Controlled Account.** All deposits to and disbursements of all or any portion of the deposits to any Controlled Account shall be in accordance with this Agreement and the applicable Controlled Account Agreement.

Borrower shall pay any and all fees charged by Depository Bank in connection with the maintenance of each Controlled Account required to be established by or for it hereunder, and the performance of the Depository Bank's duties.

(3) Security Interest.

(a) Borrower hereby grants a perfected first priority security interest in favor of Administrative Agent for the ratable benefit of the Lenders in each Controlled Account established by or for it hereunder and all financial assets and other property and sums at any time held, deposited or invested therein, and all security entitlements and investment property relating thereto, together with any interest or other earnings thereon, and all proceeds thereof, whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities (collectively, "**Controlled Account Collateral**"), together with all rights of a secured party with respect thereto under the Uniform Commercial Code, as security for the obligations of Borrower under the Loan Documents.

(b) All interest earned on any Controlled Account shall be retained in such Controlled Account. Borrower shall treat all interest earned on its Controlled Account as its income for federal income tax purposes.

(c) While any Event of Default exists, Administrative Agent shall be entitled to exercise all rights of a secured party under the Uniform Commercial Code with respect to each Controlled Account, and (without limiting the foregoing) may apply the Controlled Account Collateral to the unpaid obligations of Borrower under the Loan Documents in such order as Administrative Agent may elect in its sole discretion, without liability for any loss, and Borrower hereby consents to any such withdrawal and application as a commercially reasonable disposition of such funds and agrees that such withdrawal shall not result in satisfaction of such obligations except to the extent the proceeds are applied to such sums.

ARTICLE 17

CONDOMINIUM PROVISIONS

Section 17.1 Establishment; Covenants

(1) Subject to the terms and conditions hereof, including without limitation, Section 17.2, Lead Borrower shall have the right, with the prior written approval of the Administrative Agent, to establish a condominium regime with respect to its ownership of the Project.

(2) Lead Borrower covenants and agrees with the Lenders and Administrative Agent that, in the event that it establishes a condominium regime pursuant to Section 17.1, Lead Borrower shall:

(a) Submit the Project, together with all of the Improvements constructed or to be constructed thereon, to the provisions of the Condominium Act and satisfy all of the requirements thereof and of any other Applicable Law necessary to create a valid condominium regime inclusive of all of the Units; and obtain any required approval of the

Condominium Documents from the Attorney General of the State of New York. Any Condominium Documents and any modifications or amendments thereto shall be reasonably approved by Administrative Agent prior to the recording, filing or effectiveness thereof, provided that in the case of any such amendment which shall increase the number of condominium units, in the event that a casualty or condemnation has occurred and the provisions of Article 3 prevent restoration in connection with such casualty or condemnation, then prior to the recording, filing or effectiveness, as applicable, of such amendment, Lead Borrower, at Administrative Agent's option, shall be prohibited from recording, filing or otherwise causing the amendment to become effective and Administrative Agent, at the Majority Lenders' election, shall be permitted to vote, on Lead Borrower's behalf in accordance with the Voting Proxy delivered to Administrative Agent, or require Lead Borrower to vote, to terminate and dissolve the Condominium. In connection with such amendment, Lead Borrower shall provide updates of the documents and opinion provided herein in the event that the Condominium Declaration has been modified or amended or any of the officers, managers or directors have changed as a result of such amendment;

(b) Duly perform or cause to be duly performed, in all material respects, all obligations of the developers or sponsors under the Condominium Documents, and do or cause to be done all things necessary to operate and maintain the Project and the Condominium as a retail condominium project, that are required to be done by the developers or sponsors and comply with all Applicable Laws applicable to the Condominium, and furnish such evidence of compliance therewith as Administrative Agent may reasonably request;

(c) Subject to Administrative Agent's approval in its reasonable discretion, not cancel, terminate or revoke, or modify, or in any way alter or permit the alteration of, any of the material provisions of the Condominium Documents or grant any consents or waivers thereunder, and not to exercise any right it may have under the Condominium Documents to cancel, terminate or revoke the same. Any request for approval by Administrative Agent pursuant to this paragraph shall be made to, and approved by, Administrative Agent prior to, if necessary, submitting such request to the Attorney General of the State of New York; and

Section 17.2 Subordination of Lien to Project Condominium Declarations. Provided there exists no Potential Default or Event of Default, Administrative Agent shall, on Lead Borrower's written request, subordinate the liens of the Mortgages to the Condominium Declaration and shall execute the appropriate instruments (reasonably satisfactory to the Administrative Agent in all respects) in recordable form to effect such subordination, upon the satisfaction of the following conditions:

(1) The Administrative Agent shall have received and approved the Condominium Documents, which shall be in proper form for recording or filing, as necessary, in the appropriate offices, and certified by an officer of Lead Borrower as true, correct and complete copies of the Condominium Documents;

(2) The Title Policies insuring the Mortgages shall have been endorsed to provide a condominium endorsement and non-impairment of lien endorsement (or equivalent affirmative coverage) (which endorsements and affirmative coverage, if applicable, shall not extend the effective date of the Title Policies);

(3) The Lead Borrower shall have caused to be duly executed and delivered to Administrative Agent (i) an Assignment of Declarant's Rights in the form of Exhibit H, (ii) conditional resignations of the officers and managers of the Board of Directors of the applicable condominium association in the form of Exhibits I and J, respectively, to the extent designated by the Lead Borrower, (iii) a proxy from the Lead Borrower and each representative of the Lead Borrower on such Board of Directors in the form of Exhibit K and (iv) a letter from all the members of such Board of Directors with respect to common charges substantially in the form of Exhibit L;

(4) Administrative Agent shall have received an opinion from the Condominium's counsel to the effect that (i) the Condominium Documents satisfy all applicable requirements of Governmental Authorities, (ii) all requirements of any Applicable Law have been duly satisfied with respect to the creation of the Condominium by the Lead Borrower in New York State and (iii) the documents referred to in this Section 17.2(4) have each been duly authorized, executed and delivered by the respective parties thereto and are enforceable against said parties in accordance with their respective terms subject to customary limitations; and

(5) The condominium association which shall be created by the Condominium Documents shall have furnished to Administrative Agent at no cost or expense to Administrative Agent, insurance policies for the insurance required hereunder and under the Condominium Documents, with extended coverage naming Administrative Agent, said condominium association, and Borrower (as owner of the Units), as their respective interests may appear, as the insureds, covering all of the Improvements; said insurance shall at all times be an amount equal to 100% of the insurable value of the Improvements and shall otherwise comply with the applicable conditions contained in the Mortgages and elsewhere in this Agreement.

Section 17.3 Transfer of Collateral. The Lead Borrower will, upon the creation of the condominium regime, transfer its ownership interest in the Unit containing the Office Component (a "**Property Transfer**") to Fordham Office. Lead Borrower shall only affect such a transfer after Lead Borrower has provided written notice to Administrative Agent that each of the following conditions precedent has been satisfied with respect to such Property Transfer (hereinafter, singly and collectively, the "**Property Transfer Conditions**"):

(1) The Lead Borrower shall have provided Administrative Agent with at least ten (10) Business Days' notice of the intended Property Transfer;

(2) The construction of the Improvements shall have commenced and shall have proceeded in accordance with the terms and conditions hereof to a sufficient stage of completion acceptable to Administrative Agent, in its reasonable discretion;

(3) The Borrower shall have executed and delivered, or caused the execution and delivery of, any and all easements and any other matters as to which the Unit is either the servient or the dominant estate, that are necessary for the ownership, construction, use or operation of the Improvements;

(4) The Borrower and Guarantor shall have executed and delivered to Administrative Agent such instruments, documents, agreements, and certifications as

Administrative Agent shall have reasonably requested to effectuate, evidence or confirm the Property Transfer and the Administrative Agent's rights or remedies under the Loan Documents, including without limitation an amendment to each of the Mortgages, but in no way expanding or modifying the obligations of such Borrower or Guarantor hereunder or under the Loan Documents;

(5) Borrower shall have delivered to the Administrative Agent such documents, instruments, materials and further estoppels and certifications as Administrative Agent shall have determined are reasonably required to approve or consent to, to the extent required, the applicable Property Transfer and any requested endorsement(s) to the Title Policies delivered to Administrative Agent pursuant to Schedule 4 — Part A, Paragraph 10; and

(6) Borrower shall have paid all costs and expenses incurred by Administrative Agent in connection with any Property Transfer, including, without limitation, Administrative Agent's reasonable attorneys' fees and costs.

[Signature Pages Follow]

EXECUTED as of the date first written above.

LENDER:

EUROHYPO AG, NEW YORK BRANCH

By: _____

Name:

Title:

By: _____

Name:

Title:

Address for Notices to Eurohypo AG, New York Branch:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Telecopier No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Head of Portfolio Operations
Telecopier No.: 866 267 7680

— and —

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

BORROWER:

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

Address for Notices:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, NY 10605
Attention: Robert Masters
Telecopier No.: 914-428-3646

FORDHAM PLACE OFFICE, LLC,
a Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

Address for Notices:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, NY 10605
Attention: Robert Masters
Telecopier No.: 914-428-3646

ADMINISTRATIVE AGENT:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

Address for Notices to Eurohypo AG, New York Branch:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Telecopier No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Head of Portfolio Operations
Telecopier No.: 866 267 7680

— and —

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

LEGAL DESCRIPTION OF PROJECT

PARCEL I — (f/k/a LOT 8, Now Part of LOT 9)

ALL THAT CERTAIN piece or parcel of land, together with any improvements thereon situate, lying and being in the Borough of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Webster Avenue (100 feet in width), said point being distant south 08 degrees 26 minutes 11 seconds west, a distance of 254.35 feet from a point formed by the intersection of said easterly side of Webster Avenue with the southerly side of East Fordham Road (a/k/a Pelham Avenue variable in width) and from said point of beginning

RUNNING THENCE along the common dividing line between said Lot 8 and Lot 9 south 85 degrees 39 minutes 56 seconds east, a distance of 108.97 feet to a point;

THENCE along the common dividing line between said Lot 8 and Lot 12 south 04 degrees 33 minutes 31 seconds west, a distance of 24.68 feet to a point;

THENCE along the common dividing line between said Lots 8 and Lot 4 (lands now or formerly of Automotive Realty Corporation) north 85 degrees 39 minutes 56 seconds west, a distance of 110.65 feet to a point; on the aforementioned easterly side of Webster Avenue;

THENCE along the easterly side of said Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 24.74 feet to the point or place of BEGINNING.

PARCEL II — LOT 9:

ALL THAT CERTAIN piece or parcel of land, together with any improvements thereon situate, lying and being in the Borough of the Bronx, City and State of New York, and as further bounded and described as follows:

BEGINNING at a point on the easterly side of Webster Avenue (100 feet wide), said point being distant south 08 degrees 26 minutes 11 seconds west, a distance of 228.81 feet from a point formed by the intersection of said easterly side of Webster Avenue with the southerly side of East Fordham Road (a/k/a Pelham Avenue, variable width) and from said point of beginning;

RUNNING THENCE the following two (2) courses along the dividing line between Lot 9 (n/f reputed owner Acadia-PA East Fordham Acquisitions, LLC and Lot 12 (n/f reputed owner Acadia-PA East Fordham Acquisitions, LLC), Block 3033;

1. South 85 degrees 39 minutes 56 seconds east, a distance of 115.24 feet to a point; thence
 2. South 03 degrees 58 minutes 56 seconds west, a distance of 25.48 feet to a point; thence
-

3. Along the common dividing line between the aforementioned Lot 9 and Lots 12 & 8 (n/f Acadia-PA East Fordham Acquisitions LLC), Block 3033 north 85 degrees 39 minutes 56 seconds west, a distance of 117.22 feet to a point on the aforementioned easterly side of Webster Avenue; thence

4. Along said easterly side of Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 25.54 feet to the point or place of BEGINNING.

This description is prepared in accordance with a Survey made by Control Point Associates Inc. dated 8/30/07 and last revised 9/18/07 by Gregory A. Gallas NY P.L.S. (Control Point Associates Inc.)

PARCEL III — LOT 12:

ALL THAT CERTAIN plot, piece or parcel of land, together with any improvements thereon situate, situate, lying and being in the Borough and County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly side of Webster Avenue (100 feet wide) with the southerly side of East Fordham Road (A.K.A. Pelham Avenue, Variable Width) and from said point of beginning,

RUNNING THENCE the following three (3) courses along said southerly side of East Fordham Road;

1. South 84 degrees 34 minutes 46 seconds east, a distance of 43.27 feet to a point, THENCE

2. South 54 degrees 01 minute 22 seconds east, a distance of 29.77 feet to a point; THENCE;

3. South 40 degrees 09 minutes 32 seconds east, a distance of 85.32 feet to a point on the westerly side of Park Avenue (Variable Width) THENCE

4. Along said westerly side of Park Avenue, south 00 degrees 10 minutes 48 seconds east, a distance of 201.71 feet to a point THENCE

5. Along the dividing line between Lot 12 (Lands now or formerly of Acadia-PA East Fordham Acquisitions LLC) and Lot 4 (Lands now or formerly of Automotive Realty Corporation), Block 3033, North 85 degrees 39 minutes 56 seconds west, a distance of 53.59 feet to a point, THENCE

6. Along the common dividing line between the aforementioned Lot 12, Lot 8 (Land now or formerly of Acadia-PA East Fordham Acquisitions LLC) and Lot 9 (lands now or formerly of Acadia-PA East Fordham Acquisitions LLC) Block 3033, North 04 degrees 33 minutes 31 seconds east, a distance of 24.68 feet to a point, THENCE, The following three (3) courses along the dividing line between the aforementioned Lots 12 and 9;

7. South 85 degrees 39 minutes 56 seconds east, a distance of 8.25 feet to a point, THENCE
 8. North 03 degrees 58 minutes 56 seconds east, a distance of 25.48 feet to a point, THENCE
 9. North 85 degrees 39 minutes 56 seconds west, a distance of 115.24 feet to a point on the aforementioned easterly side of Webster Avenue, THENCE
 10. Along said easterly side of Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 228.81 feet to the point and place of BEGINNING.
-

BUDGET

FORM OF PROJECT LOAN NOTE

PROJECT LOAN NOTE

\$ _____

_____, 200_
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC (individually and collectively, jointly and severally, the "**Borrower**"), hereby promises to pay to _____ (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of EUROHYPO AG, NEW YORK BRANCH, at 1114 Avenue of the Americas, 29th Floor, New York, New York 10036, the principal sum of _____ and _____ Dollars (\$ _____) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

With respect to the definition of "Borrower", except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Project Loan Note is one of the Notes referred to in the Acquisition and Project Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") among Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans

Note

made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as permitted by Sections 12.8 and 12.23 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

[No further text on this page]

Note

2

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first above written.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a
Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE LLC, a Delaware limited liability
company

By: _____
Name: Robert Masters
Title: Senior Vice President

Note
3

FORM OF BUILDING LOAN NOTE
BUILDING LOAN NOTE

\$ _____

_____, 2007
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC (individually and collectively, jointly and severally, the "**Borrower**"), hereby promises to pay to _____ (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of EUROHYPO AG, NEW YORK BRANCH, at 1114 Avenue of the Americas, 29th Floor, New York, New York 10036, the principal sum of _____ and _____ Dollars (\$ _____) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

With respect to the definition of "Borrower", except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Building Loan Note is one of the Notes referred to in the Acquisition and Project Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") and the Building Loan Agreement, each among Borrower, the lenders party thereto (including the Lender) and Eurohypo AG, New York Branch, as

Administrative Agent, and evidences Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as permitted by Sections 12.8 and 12.23 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

[No further text on this page]

Note

2

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first above written.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a
Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE LLC, a Delaware limited
liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

Note
3

FORM OF ACQUISITION LOAN NOTE
ACQUISITION LOAN NOTE

\$ _____

_____, 2007
New York, New York

FOR VALUE RECEIVED, ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC (individually and collectively, jointly and severally, the "**Borrower**"), hereby promises to pay to _____ (the "Lender"), for account of its respective Applicable Lending Offices provided for by the Agreement referred to below, at the principal office of EUROHYPO AG, NEW YORK BRANCH, at 1114 Avenue of the Americas, 29th Floor, New York, New York 10036, the principal sum of _____ and _____ Dollars (\$ _____) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Lender to Borrower under the Agreement), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Agreement, and to pay interest on the unpaid principal amount of each such Loan, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Agreement.

With respect to the definition of "Borrower", except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.

The date, amount, Type, interest rate and duration of Interest Period (if applicable) of each Loan made by the Lender to Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Agreement or hereunder in respect of the Loans made by the Lender.

This Acquisition Loan Note is one of the Notes referred to in the Acquisition and Project Loan Agreement dated as of the date hereof (as modified, supplemented, extended and in effect from time to time, the "**Agreement**") among Borrower, the lenders party thereto (including the

Lender) and Eurohypo AG, New York Branch, as Administrative Agent, and evidences Loans made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Agreement.

The Agreement provides for the acceleration of the maturity of this Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as permitted by Sections 12.8 and 12.23 of the Agreement, this Note may not be assigned by the Lender to any other Person.

This Note shall be governed by, and construed in accordance with, the law of the State of New York without regard to conflicts of laws principles other than Section 5-1401 of the General Obligations Law of the State of New York.

As long as a Hedge Agreement with the Eurohypo Counterparty is in effect, the interest payable under this Note shall be increased or decreased from time to time in accordance with such Hedge Agreement. Therefore, this Note also evidences such amounts as may become due and payable by Borrower under the Hedge Agreement with the Eurohypo Counterparty, including, without limitation, any amount payable upon or in connection with termination of such Hedge Agreement, all of which sums shall be deemed to constitute "Additional Interest" evidenced hereby and payable pursuant to this Note and in accordance with the terms and provisions of the Hedge Agreement with a Eurohypo Counterparty.

[No further text on this page]

Note

5

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the date first above written.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a
Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

FORDHAM PLACE OFFICE LLC, a Delaware limited
liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

Note
6

FORM OF ASSIGNMENT AND ASSUMPTION
ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “Assignor”) and [Insert name of Assignee] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreements identified below (as amended, the “Loan Agreements”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreements, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreements and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreements, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

- | | |
|--------------------------|---|
| 1. Assignor: | |
| 2. Assignee: |
[and is an Approved Fund or an Affiliate of
[identify Lender] ¹] |
| 3. Borrower: | |
| 4. Administrative Agent: | Eurohypo, AG, New York Branch, as administrative
agent under the Loan Agreements |

¹ Select as applicable.

5. Construction Loan Agreement: The (i) \$_____ Acquisition and Project Loan Agreement and (ii) \$_____ Building Loan Agreement, each dated as of _____, 200____, among Borrower, the Lenders parties thereto, and Eurohypo, AG, New York Branch, as Administrative Agent

6. Assigned Interest:

Commitment/ Loans Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Loans Assigned	Amount of Unused Commitment Assigned	Percentage Assigned of Commitment and Loans ²
Acquisition Loan	\$	\$	\$	%
Project Loan	\$	\$	\$	%
Building Loan	\$	\$	\$	%

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
 Name:
 Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____
 Name:
 Title:

Applicable Lending Office

Address for Notices:

² Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

Telephone No.: ()
Telecopier No.: ()

[Consented to and]³ Accepted:

EUROHYPO AG, NEW YORK BRANCH, as
Administrative Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

³ To be added only if the consent of Administrative Agent is required by the terms of the Loan Agreements.

Assignment and Assumption

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreements or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreements, (ii) it satisfies the requirements, if any, specified in the Loan Agreements that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreements as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Loan Agreements, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Loan Agreements, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

FORM OF NOTICE OF CONVERSION/CONTINUATION

_____, 200_

Eurohypo AG, New York Branch, as Administrative Agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attn: _____

Re: (i) Acquisition and Project Loan Agreement dated as of October ___, 2007 (as the same may be amended, modified or supplemented from time to time, the "**Agreement**") and (ii) Building Loan Agreement, dated as of October ___, 2007, each by and among ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a Delaware limited liability company and FORDHAM PLACE OFFICE LLC, a Delaware limited liability company (jointly and severally, individually and collectively the "**Borrower**"), the lenders from time to time party to the Agreement (the "**Lenders**"), and EUROHYPO AG, NEW YORK BRANCH, as Administrative Agent on behalf of the Lenders (the "**Administrative Agent**")

Ladies and Gentlemen:

Reference is made to the Agreement. Capitalized terms used in this Notice of Conversion/Continuation without definition have the meanings specified in the Agreement.

Pursuant to Section 2.2 of the Agreement, Borrower hereby elects to convert or continue the loans described in attached Schedule 1 (the "**Loans**"). In connection therewith, Borrower and the undersigned authorized officer of Borrower hereby certify that:

(1) Representations and Warranties. All representations and warranties of Borrower contained in the Loan Documents, including those contained in Article 7 of the Agreement, are true and correct as of the date hereof and shall be true and correct on the date of the continuation/conversion of the Loans, both before and after giving effect to such continuation/conversion; and

(2) No Event of Default. No Event of Default exists as of the date hereof or will result from the continuation/conversion of the Loans.

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a
Delaware limited liability company

By: _____
Name:
Title:

LOAN(S) TO BE CONVERTED OR CONTINUED

- A. All conversions and continuations must be of a Loan, or portion thereof, in a principal amount of \$1,000,000 or a multiple of \$100,000 in excess thereof.
- B. Conversions/continuations to a Eurodollar Loan under paragraphs C(1) and (2) below are not permitted if, after giving effect to thereto, (a) there would be more than four (4) different Eurodollar Loans in effect, or (b) the aggregate outstanding principal amount of all Eurodollar Loans would be reduced to be less than \$1,000,000.
- C. Pursuant to Section 2.2 of the Agreement, Borrower elects to Continue or Convert Loans as follows:
- (1) Effective Date of Election: _____, 200_
- (2) Amount, Type and Interest Period of Eurodollar Loans to be Continued as Eurodollar Loans:
- (i) Eurodollar Loans in the aggregate amount of \$_____ to be Continued as Eurodollar Loans with an Interest Period of _____ months, such Eurodollar Loans consisting of the following Loans:
- Project Loans: \$ _____
Building Loans: \$ _____
Acquisition Loans: \$ _____
- (3) Amount, Type and Interest Period of Alternate Base Rate Loans to be Converted to Eurodollar Loans:
- (i) Alternate Base Rate Loans in the aggregate amount of \$_____ to be Converted to Eurodollar Loans with an Interest period of _____ months, such Alternate Base Rate Loans consisting of the following Loans:
- Project Loans: \$ _____
Building Loans: \$ _____
Acquisition Loans: \$ _____
- (4) Amount and Type of Eurodollar Loans to be Converted to Alternate Base Rate Loans:
- (i) Eurodollar Loans in the aggregate amount of \$_____ to be Converted to Alternate Base Rate Loans, such Eurodollar Loans consisting of the following Loans:
- Project Loans: \$ _____
Building Loans: \$ _____
Acquisition Loans: \$ _____

FORM OF REQUEST FOR LOAN ADVANCE (PROJECT LOANS)
REQUEST FOR LOAN ADVANCE (PROJECT LOANS)

_____, 200_

Eurohypo AG, New York Branch, as Administrative Agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attn: _____

Re: Eurohypo AG, New York Branch, as Administrative Agent, Loans in the aggregate amount of \$_____ to _____
Project:

Ladies and Gentlemen:

Reference is made to that certain (i) Acquisition and Project Loan Agreement dated October ____, 2007 among Eurohypo AG, New York Branch, as Administrative Agent, certain lenders thereto, Fordham Place Office LLC and the undersigned (the "**Loan Agreement**") and (ii) Building Loan Agreement, dated October ____, 2007 among Eurohypo AG, New York Branch, as Administrative Agent, certain lenders thereto, Fordham Place Office LLC and the undersigned (the "**Building Loan Agreement**"). Terms not defined in this Request for Loan Advance shall have the same meaning as in the Loan Agreement.

This Request for Loan Advance (Project Loans) (i) is request No. _____ under the Loan Agreement with respect to Project Loans, (ii) constitutes Borrower's request to borrow Project Loans in the amounts and in the manner set forth below and (iii) is otherwise subject to the terms of the Loan Agreement. The information relating to the proposed Project Loans is as follows:

1. The date of the proposed Project Loans is _____, _____.
2. The aggregate amount of the proposed Project Loans (after deducting an aggregate Retainage of \$_____) is \$_____.
3. The aggregate amount of the proposed Project Loans which are to bear interest as Base Rate Loans is \$_____.
4. The aggregate amount of the proposed Project Loans which are to bear interest as Eurodollar Loans is \$_____.
5. The Interest Periods and the aggregate amount of the proposed Eurodollar Loans with respect to each such Interest Period are as follows:

- 1 month \$ _____.
- 2 month \$ _____.
- 3 month \$ _____.
- 6 month \$ _____.
- 9 month \$ _____.
- 12 month \$ _____.

6. The aggregate amount of Project Loans requested hereunder, when added to prior (if any) Project Loans funded under the Loan Agreement, will result in total Project Loans outstanding under the Loan Agreement of \$_____. Funds undrawn under the aggregate Project Loan Commitments after giving effect to the Project Loans requested hereunder will then be \$_____.

Attached to this Request for Loan Advance are the following items:

- A. To the extent not previously delivered to Administrative Agent, for funds due under the Construction Management Agreement, copies of the Construction Manager’s invoices relating to payments requested under this Request for Loan Advance, together with paid invoices evidencing payment of funds previously advanced to the Construction Manager pursuant to Project Loans;
- B. To the extent not previously delivered to Administrative Agent, for funds paid directly by Borrower, copies of all invoices relating to payments requested under this Request for Loan Advance, together with paid invoices evidencing payment of funds previously advanced to Borrower pursuant to Project Loans;
- C. Copy of the Budget attached as Schedule 1 hereto, showing the portion of each budget line item comprising the aggregate Project Loans subject to this request and any Retainage with respect thereto, and the total of all Project Loans to date, inclusive of the Project Loans subject to this request;
- D. If this Request for Loan Advance covers any stored materials under Section 4.8 of the Building Loan Agreement, a Stored Materials Statement in the form of Schedule 2 attached thereto.
- E. Copies of sworn unconditional lien waivers from each trade contractor, subcontractor, materialman, supplier and vendor who is to be paid from the proceeds of this Advance, to the extent not previously delivered to Administrative Agent;
- F. Borrower’s Architect’s Certificate for Payment in accordance with AIA Document G 702;
- G. Requisition form duly executed by the Construction Manager; and
- H. Copies of all other documents required pursuant to Article IV and Schedule 4 of the Loan Agreement.

In connection with this advance, Borrower hereby certifies that the following are true and correct:

- I. To the best of its knowledge, the facts set forth in the Construction Manager's invoices and in Schedule 1 and Schedule 2;
- II. Except for contractors, subcontractors, materialmen, suppliers or vendors who are to be paid from proceeds of the Project Loans requested hereunder, there is no outstanding Indebtedness of the undersigned for labor, wages or materials in connection with the construction of the Improvements which is currently due, excluding work that is being contested in good faith, and which could become the basis of a Lien on the Project;
- III. All sums previously requisitioned have been applied to the payment of the Hard Costs and the Soft Costs, excluding work that is being contested in good faith, heretofore incurred;
- IV. All Change Orders have been submitted to Administrative Agent and the Construction Consultant and all Change Orders for which a Project Loan is requested hereby have been approved by Administrative Agent and the Construction Consultant to the extent required by the Loan Agreement;
- V. In the judgment of Borrower, the Improvements are _____% complete; and
- VI. To the best of its knowledge, Borrower is not in Potential Default or Event of Default under any of the terms and conditions of the Loan Documents;
- VII. After giving effect to this advance, the Loans will remain In Balance, in accordance with Section 4.3 of the Loan Agreement, and all conditions to this advance have been satisfied in accordance with Section 4.1 of the Loan Agreement;
- VIII. Each representation and warranty of Borrower set forth in the Loan Agreement remains true and correct in all material respects as of the date of this Request for Loan Advance and will be so on the date of disbursement of the requested Loan, except with respect to (a) matters which have been disclosed in writing to and approved by Administrative Agent (subject, however, to the terms of the Loan Agreement) or (b) liens of mechanics and materialmen (subject to Schedule 4 — Part A, [paragraph 3]) and matters addressed in Section 3.1 of the Loan Agreement, which would not, if adversely decided, have a Material Adverse Effect;
- IX. No litigation or arbitral proceedings are pending or, to the best of Borrower's knowledge, threatened against Borrower, Guarantor or the Property Manager, which is likely to (1) affect the validity or priority of the liens of the Mortgages or (2) or, if adversely decided, have a Material Adverse Effect; and

X. All Government Approvals, to the extent then required for the construction of the Construction Work, have been obtained and that all Applicable Laws relating to the construction and operation of the Project have been and will continue to be complied with.

The undersigned requests that the requested Project Loans be advanced by depositing the same into Borrower's account to be designated by Borrower (Account No. _____). The person signing this Request for Loan Advance (Project Loans) on behalf of Borrower represents and warrants to you that such person is authorized to execute this letter on behalf of Borrower.

[Signature Page Follows]

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC, a
Delaware limited liability company

By: _____
Name:
Title:

RECEIVED:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

cc: [CONSTRUCTION CONSULTANT] (with attachments)

SCHEDULE 1 — to Request for Loan Advance

[Attach form of Budget Outline to be Used]

SCHEDULE 2 — to Request for Loan Advance

STORED MATERIALS STATEMENT NO.

Borrower: _____

Period Covered (PC): From _____ To _____

Project: _____

Date: _____

Address: _____

<u>ITEM NO.</u>	<u>DESCRIPTION OF MATERIALS STORED (ATTACH INVOICES, LISTINGS AND/OR OTHER PRICE SUPPORTING DOCUMENTATION</u>	<u>LOCATION WHERE STORED</u>	<u>NAME OF SUB- CONTRACTOR /SUPPLIER</u>	<u>OPENING INVENTORY</u>	<u>ADDITIONS TO INVENTORY</u>	<u>USAGE OF INVENTORY</u>	<u>CLOSING INVENTORY</u>	<u>RETAINED AMOUNT NOT YET DUE</u>
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TOTALS OR SUBTOTALS

FORM OF REQUEST FOR LOAN ADVANCE (BUILDING LOANS)
REQUEST FOR LOAN ADVANCE (BUILDING LOANS)

_____, 200_

Eurohypo AG, New York Branch, as Administrative Agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attn: _____

Re: Eurohypo AG, New York Branch, as Administrative Agent, Loans in the aggregate amount of \$_____ to Acadia-PA East Fordham
Acquisitions, LLC and Fordham Place Office LLC

Project:

Ladies and Gentlemen:

Reference is made to that certain (i) Acquisition and Project Loan Agreement dated October ___, 2007 among Eurohypo AG, New York Branch, as Administrative Agent, certain lenders thereto, Fordham Place Office LLC and the undersigned (the "**Loan Agreement**") and (ii) Building Loan Agreement, dated October ___, 2007 among Eurohypo AG, New York Branch, as Administrative Agent, certain lenders thereto, Fordham Place Office LLC and the undersigned (the "**Building Loan Agreement**"). Terms not defined in this Request for Loan Advance shall have the same meaning as in the Loan Agreement.

This Request for Loan Advance (Building Loans) (i) is request No. _____ under the Loan Agreement with respect to Building Loans, (ii) constitutes Borrower's request to borrow Building Loans in the amounts and in the manner set forth below and (iii) is otherwise subject to the terms of the Loan Agreement and the Building Loan Agreement. The information relating to the proposed Building Loans is as follows:

1. The date of the proposed Building Loans is _____, ____.
2. The aggregate amount of the proposed Building Loans (after deducting an aggregate Retainage of \$_____) is \$_____.
3. The aggregate amount of the proposed Building Loans which are to bear interest as Base Rate Loans is \$_____.
4. The aggregate amount of the proposed Building Loans which are to bear interest as Eurodollar Loans is \$_____.

5. The Interest Periods and the aggregate amount of the proposed Eurodollar Loans with respect to each such Interest Period are as follows:

— 1 month	\$ _____.
— 2 month	\$ _____.
— 3 month	\$ _____.
— 6 month	\$ _____.
— 9 month	\$ _____.
— 12 month	\$ _____.

6. The aggregate amount of Building Loans requested hereunder, when added to prior (if any) Building Loans funded under the Building Loan Agreement, will result in total Building Loans outstanding under the Building Loan Agreement of \$ _____. Funds undrawn under the aggregate Building Loan Commitments after giving effect to the Building Loans requested hereunder will then be \$ _____.

Attached to this Request for Loan Advance (Building Loans) are the following items:

- A. To the extent not previously delivered to Administrative Agent, for funds due under the Construction Management Agreement, copies of the Construction Manager’s invoices relating to payments requested under this Request for Loan Advance (Building Loans), together with paid invoices evidencing payment of funds previously advanced to the Construction Manager pursuant to Building Loans;
- B. To the extent not previously delivered to Administrative Agent, for funds paid directly by Borrower, copies of all invoices relating to payments requested under this Request for Loan Advance (Building Loans), together with paid invoices evidencing payment of funds previously advanced to Borrower pursuant to Building Loans;
- C. Copy of the Budget attached as Schedule 1 hereto, showing the portion of each budget line item comprising the aggregate Building Loans subject to this request and any Retainage with respect thereto, and the total of all Building Loans to date, inclusive of the Building Loans subject to this request;
- D. If this Request for Loan Advance (Building Loans) covers any stored materials under Section 4.8 of the Building Loan Agreement, a Stored Materials Statement in the form of Schedule 2 attached thereto.
- E. Copies of sworn unconditional lien waivers from each trade contractor, subcontractor, materialman, supplier and vendor who is to be paid from the proceeds of this Advance, to the extent not previously delivered to Administrative Agent;

- F. Borrower's Architect's Certificate for Payment in accordance with AIA Document G 702;
- G. Requisition form duly executed by the Construction Manager; and
- H. Copies of all other documents required pursuant to Article IV and Schedule 4 of the Loan Agreement.

In connection with this advance, Borrower hereby certifies that the following are true and correct:

- I. To the best of its knowledge, the facts set forth in the Construction Manager's invoices and in Schedule 1 and Schedule 2;
- II. Except for contractors, subcontractors, materialmen, suppliers or vendors who are to be paid from proceeds of the Building Loans requested hereunder, there is no outstanding Indebtedness of the undersigned for labor, wages or materials in connection with the construction of the Improvements which is currently due, excluding work that is being contested in good faith, and which could become the basis of a Lien on the Project;
- III. All sums previously requisitioned have been applied to the payment of the Hard Costs and the Soft Costs, excluding work that is being contested in good faith, heretofore incurred;
- IV. All Change Orders have been submitted to Administrative Agent and the Construction Consultant and all Change Orders for which a Building Loan is requested hereby have been approved by Administrative Agent and the Construction Consultant to the extent required by the Loan Agreement;
- V. In the judgment of Borrower, the Improvements are ___% complete; and
- VI. To the best of its knowledge, Borrower is not in Potential Default or Event of Default under any of the terms and conditions of the Loan Documents;
- VII. After giving effect to this advance, the Loans will remain In Balance, in accordance with Section 4.3 of the Loan Agreement, and all conditions to this advance have been satisfied in accordance with Section 4.1 of the Loan Agreement;
- VIII. Each representation and warranty of Borrower set forth in the Loan Agreement remains true and correct in all material respects as of the date of this Request for Loan Advance and will be so on the date of disbursement of the requested Loan, except with respect to (a) matters which have been disclosed in writing to and approved by Administrative Agent (subject, however, to the terms of the Loan Agreement) or (b) liens of mechanics and materialmen (subject to Schedule 4 — Part A, [paragraph 3]) and matters addressed in Section 3.1 of the Loan

Agreement, which would not, if adversely decided, have a Material Adverse Effect;

- IX. No litigation or arbitral proceedings are pending or, to the best of Borrower's knowledge, threatened against Borrower, Guarantor or the Property Manager, which is likely to (1) affect the validity or priority of the liens of the Mortgages or (2) or, if adversely decided, have a Material Adverse Effect; and
- X. All Government Approvals, to the extent then required for the construction of the Construction Work, have been obtained and that all Applicable Laws relating to the construction and operation of the Project have been and will continue to be complied with.

The undersigned requests that the requested Building Loans be advanced by depositing the same into Borrower's account to be designated by Borrower (Account No. _____). The person signing this Request for Loan Advance (Building Loans) on behalf of Borrower represents and warrants to you that such person is authorized to execute this letter on behalf of Borrower.

[Signature Page Follows]

ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC
a Delaware limited liability company

By: _____
Name:
Title:

RECEIVED:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

cc: [CONSTRUCTION CONSULTANT] (with attachments)

SCHEDULE 1 — to Request for Loan Advance

[Attach form of Budget Outline to be Used]

SCHEDULE 2 — to Request for Loan Advance

STORED MATERIALS STATEMENT NO.

Borrower: _____

Period Covered (PC): From _____ To _____

Project: _____

Date: _____

Address: _____

<u>ITEM NO.</u>	<u>DESCRIPTION OF MATERIALS STORED (ATTACH INVOICES, LISTINGS AND/OR OTHER PRICE SUPPORTING DOCUMENTATION</u>	<u>LOCATION WHERE STORED</u>	<u>NAME OF SUB- CONTRACTOR /SUPPLIER</u>	<u>OPENING INVENTORY</u>	<u>ADDITIONS TO INVENTORY</u>	<u>USAGE OF INVENTORY</u>	<u>CLOSING INVENTORY</u>	<u>RETAINED AMOUNT NOT YET DUE</u>
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TOTALS OR SUBTOTALS

CONTROLLED ACCOUNT AGREEMENT

See Attached

ASSIGNMENT OF DECLARANT'S RIGHTS

Acadia PA East Fordham Acquisitions, LLC, a Delaware limited liability company, and Fordham Place Office, LLC, a Delaware limited liability company, each having an address c/o Acadia Realty Trust, 1311 Mamoroneck Avenue, Suite 260, White Plains, New York (collectively the "**Assignor**"), for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, assign, transfer and set over unto EUROHYPO AG, NEW YORK BRANCH ("**Administrative Agent**"), all of Assignor's right and privileges (the "**Declarant's Rights**") arising under (i) the Declaration (as defined below), and (ii) the by-laws and articles of incorporation relating to the condominium (the "**Condominium**") created by the Declaration (said by-laws and articles of incorporation, together with the Declaration, collectively called the "**Condominium Documents**").

So long as no Default or Event of Default shall exist under the Mortgages (as defined below), Assignor may exercise the Declarant's Rights and Administrative Agent may not exercise the Declarant's Rights, except that Assignor may not (i) transfer or encumber any of the Declarant's Rights, except as permitted in the Mortgages, (ii) except as permitted under the Loan Agreement (as defined below) cause or allow any of the Condominium Documents that require the consent or approval of declarant to amend or which Assignor has the right to amend independently to be modified without Administrative Agent's prior written consent or (iii) allow any of the officers or managers of the association of the Condominium which Assignor has appointed to resign or be removed from office, unless Assignor shall have caused to be delivered to Administrative Agent (A) duly executed letter of resignation from each such officer or director being added to said association in the form attached as Exhibits I and J, respectively, to the Acquisition and Project Loan Agreement, dated as of October __, 2007, among Administrative Agent, certain lenders and Assignor, as borrower (the "**Loan Agreement**") and (B) a proxy from each director in the form attached as Exhibit K to the Loan Agreement.

Upon the full payment and performance of all obligations secured by the Mortgage, the Declarant's Rights shall automatically be reassigned to Assignor by Administrative Agent and this Assignment shall terminate.

For the purposes of this Assignment, "**Declaration**" shall mean the Declaration of Condominium for _____, a condominium, dated _____, 200____, and recorded on _____, 200____, in the Public Records of _____ County, _____ in Book __, page __, together with all amendments thereto, if any; "**Mortgages**" shall mean, collectively, the mortgages dated October __, 2007 from Assignor to Administrative Agent which secure a \$_____ acquisition loan, a \$_____ project loan and a \$_____ building loan and which were recorded on _____, 2007 in the aforesaid Public Records in Book _____, page ____.

This Assignment shall be construed and enforced in accordance with the laws of the State of New York.

The rights and privileges of Administrative Agent hereunder shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, Assignor and Administrative Agent have each duly executed and delivered this Assignment this _____ day of _____, 200__.

ACADIA PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

FORDHAM PLACE OFFICE LLC, a
Delaware limited liability company

By: _____
Name:
Title:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

[add acknowledgements]

CONDITIONAL RESIGNATION OF OFFICERS

_____ CONDOMINIUM
(Resignation of Officers)
_____, 200__

Eurohypo AG, New York Branch
as administrative agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:

Re: _____ Condominium

Ladies and Gentlemen:

The undersigned _____, _____, _____, _____ and _____,
being all of the officers of the Owner's Association of the referenced Condominium which were appointed by _____
_____, hereby tender their respective resignations as officers hereof. Said resignations may not be rescinded or revoked by any of the undersigned so
long as you are the holder of any mortgage or deed of trust encumbering any of the unsold condominium units of said Condominium. Said resignations shall
be effective upon your acceptance thereof, without notice to the undersigned, at any time during the existence of an Event of Default under any such mortgage
or deed of trust.

Very truly yours,

CONDITIONAL RESIGNATION OF MANAGERS

_____ CONDOMINIUM
(Resignation of Managers)
_____, 200__

Eurohypo AG, New York Branch
as administrative agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:

Re: Condominium

Ladies and Gentlemen:

The undersigned _____, _____, _____, _____ and _____, being all of the managers of the Board of Managers of the Owner's Association of the referenced Condominium which were appointed by _____, hereby tender their respective resignations as managers thereof. Said resignations may not be rescinded or revoked by any of the undersigned so long as you are the holder of any mortgage or deed of trust encumbering any of the unsold condominium units of said Condominium. Said resignations shall be effective upon your acceptance thereof, without notice to the undersigned, at any time during the existence of an Event of Default under any such mortgage or deed of trust.

Very truly yours,

VOTING PROXY

_____ CONDOMINIUM
(Proxy)
_____, 200__

Eurohypo AG, New York Branch
as administrative agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:

Re: _____ Condominium

Ladies and Gentlemen:

Reference is made to that certain (i) Acquisition and Project Loan Agreement, dated as of October ____, 2007 (as same may hereafter be amended, modified or supplemented, the "Agreement") and (ii) Building Loan Agreement, dated as of October ____, 2007, each among Acadia-PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC, both as borrowers (collectively the "Borrower"), the lenders party thereto (collectively, together with their successors and assigns, "Lenders") and Eurohypo AG, New York Branch, as administrative agent (in such capacity, together with its successors and assigns, "Administrative Agent") relating to the development of the above referenced Condominium. All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Agreement.

Each of (a) Borrower, being the owner of the Units under the Condominium Documents, and (b) the undersigned representatives of Borrower on the board of managers of the Condominium (collectively, the "Board Members"), hereby grants to Administrative Agent (on behalf of the Lenders) this proxy to take all actions and to exercise all rights and privileges of Borrower and the Board Members pursuant to the Condominium Documents, or any of them, but only if and for so long as an Event of Default shall occur and be continuing. Borrower and each Board Member hereby irrevocably appoints Administrative Agent as its true and lawful attorney-in-fact, which appointment is together with an interest, to execute all documents and take all actions necessary to effectuate such proxy, provided that such appointment is being made on the understanding that Administrative Agent shall only exercise the rights and powers provided in this proxy following the occurrence and during the continuance of an Event of Default.

This proxy may be executed in one or more counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same proxy. Nothing contained in this proxy shall impose or subject Lender to any liability or obligations or shall obligate Administrative Agent to take any actions with the powers conveyed by this proxy. This proxy shall, notwithstanding anything to the contrary in the Condominium Documents, be irrevocable prior to the repayment in full of all of the Indebtedness.

ACADIA PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

FORDHAM PLACE OFFICE LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Name:

Name:

Name:

This Proxy and the powers granted and designation made hereby are acknowledged by the undersigned.

_____ CONDOMINIUM

By: _____
Name:
Title:

[add acknowledgements]

COMMON CHARGES LETTER

_____ CONDOMINIUM
(Condominium Charges)
_____, 200__

Eurohypo AG, New York Branch
as administrative agent
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:

Re: _____ Condominium

Ladies and Gentlemen:

Reference is made to that certain (i) Acquisition and Project Loan Agreement, dated as of October __, 2007 (as same may hereafter be amended, modified or supplemented, the "**Agreement**") and (ii) Building Loan Agreement, dated as of October __, 2007, each among Acadia PA East Fordham Acquisitions, LLC, and Fordham Place Office LLC, both as borrowers (collectively, the "**Borrower**"), the lenders party thereto (collectively, together with their successors and assigns, "**Lenders**") and Eurohypo AG, New York Branch, as administrative agent (in such capacity, together with its successors and assigns, "**Administrative Agent**") relating to the development of the above referenced Condominium. All capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Agreement.

In connection with the Loans, recognizing that Lenders and Administrative Agent will rely on the matters set forth herein in making the Loans to Borrowers, _____ hereby represent, warrant, certify and agree as follows:

1. All initially capitalized terms used herein without definition and which are defined in that certain [DESCRIBE DECLARATION] (the "**Declaration**"), or in the By-Laws referred to therein, shall have the meanings set forth for such terms in the Declaration, or in such By-Laws (as applicable)¹. A true, correct and complete copy of the Declaration (including the By-Laws attached thereto) and all rules and regulations adopted by the Board pursuant to Section __ of the By-Laws or otherwise (all such items being collectively referred to herein as the "**Condominium Documents**") are attached hereto as Exhibit A. Except as indicated in Exhibit A, the Condominium Documents have not been modified, altered or amended and are in full force and effect.

2. The Board hereby recognizes Administrative Agent (on behalf of the Lenders) as, and Administrative Agent shall be deemed to be, a [Recognized Mortgagee] of Unit Nos. __, _____ and _____ (collectively, the "**Units**") and that the lien of Administrative Agent's [Registered

¹ Definitions must be amended accordingly.

Mortgage(s)] are first priority liens for purposes of the Condominium Documents. Administrative Agent's current address is as set forth above.

3. All [Common Charges] and all other charges and assessments, if any, assessed against any of the Units or otherwise payable under any of the Condominium Documents by the Unit Owners have been paid in full through the date hereof. No special assessments have been levied or assessed by the Board which are payable.

4. No Unit, Unit Owner or Occupant is in violation or breach of, or in default under, any of the Condominium Documents, and the Board knows of no (a) event or condition which, with the passage of time or the giving of notice or both, would constitute such a violation, breach or default by any Unit, Unit Owner or Occupant or (b) claims, demands, causes of action or proceedings, pending or threatened, against the Board or any Unit Owner or Occupant which would entitle the Board or any Unit Owner or Occupant to indemnification by any other Unit Owner or Occupant pursuant to any of the Condominium Documents (including, without limitation, pursuant to Section _____ of the Declaration).

5. There are no mortgages, deed of trust, liens or other security interests encumbering any Unit (including liens for unpaid Common Charges), except those in favor of Administrative Agent.

6. The Board has not engaged or employed any managing agent or employees pursuant to Section _____ of the By-Laws.

7. A budget has not yet been adopted by the Board. The Board will deliver a true, correct and complete copy of each budget (and any amendments thereto) to Administrative Agent promptly following the date on which each of such items is adopted pursuant to Section _____ of the By-Laws.

8. The officers of the Condominium are as follows:

President: _____

Vice President/Treasurer: _____

Vice President/Secretary: _____

9. In addition to the Board's obligations under Section ____ of the By-Laws, the Board agrees to execute and deliver to Administrative Agent, as soon as is reasonably practical, and in any event within ten (10) days after Administrative Agent's written request, a letter dated as of the then current date, in the form of this letter (with such changes as may be necessary due to changes in the applicable facts and circumstances) and addressing any other facts and circumstances pertaining to the Condominium Documents and the operation of the Project as may reasonably be requested by Administrative Agent at such time.

10. The Board hereby acknowledges and consents to the powers granted and the designation made by [_____] and the officers of the Condominium to Administrative

Agent pursuant to that certain Proxy given by [_____] and the officers of the Condominium to the Lenders in connection with the Loans.

This letter may be executed in one or more counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same letter.

Name:

Name:

Name:

The undersigned, being the Unit Owner of the Units hereby consents to, acknowledges and agrees with the foregoing with the same force and effect as if it were the Board.

ACADIA PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

FORDHAM PLACE OFFICE LLC, a
Delaware limited liability company

By: _____
Name:
Title:

Exhibit A
Condominium Documents

COMMITMENTS

Project Loan Commitments:

<u>Lender</u>	<u>Commitment</u>
Eurohypo AG, New York Branch	\$1,930,757.00
	\$
	\$
Total	\$1,930,757.00

Building Loan Commitments:

<u>Lender</u>	<u>Commitment</u>
Eurohypo AG, New York Branch	\$75,339,243.00
	\$
	\$
Total	\$75,339,243.00

Acquisition Loan Commitments:

<u>Lender</u>	<u>Commitment</u>
Eurohypo AG, New York Branch	\$18,000,000.00
	\$
	\$
Total	\$18,000,000.00

LEASING GUIDELINES

PROPORTIONATE SHARE

<u>Lender</u>	<u>Percentage</u>
Eurohypo AG, New York Branch	100%
Total	100%

WIRE INSTRUCTIONS

Bank of New York, NY

ABA 021 000 018

Account No.: 8900513497

Account Name: Eurohypo AG, NY

Ref: 400 E. Fordham Road

**INSURANCE REQUIREMENTS FOR CONSTRUCTION MANAGERS,
MAJOR CONTRACTORS, ARCHITECTS AND DESIGN PROFESSIONALS**

A. Minimum Insurance Requirements For Contractors

1. Workers Compensation and Employers Liability Coverage.

- Statutory Workers Compensation coverage
- Employers Liability — \$1 million policy limit
- Thirty (30) days notice of cancellation

2. General Liability Coverage

Limits of Liability: \$1 million combined single limit for bodily injury, personal injury or property damage per occurrence/\$2 million aggregate per project or location. General Liability Insurance shall also include an endorsement providing that the insurance afforded under the contractor's policy is primary insurance and without contribution from any other insurance maintained by Borrower.

"Occurrence" form, including:

- Premises/Operations Liability
- Blanket Contractual Liability, including coverage for all liability assumed under this contract
- Products & Completed Operations
- Pollution coverage for losses arising out of a hostile fire
- "XCU" Hazards must be covered
- Thirty (30) days notice of cancellation to Borrower as a condition of cancellation

3. Business Automobile Coverage

- Limit of Liability: \$1 million combined single limit per accident for bodily injury or property damage
- Business Auto policy form, including:
 - coverage for "any auto" which includes autos owned, hired, and non-owned autos
 - Thirty (30) days notice of cancellation

4. Umbrella Liability Coverage

- Limit of Liability: Not less than \$100 million.

5. Property Insurance

All contractors and subcontractors shall be responsible for all loss or damage to contractors' tools, equipment sheds, and any other materials or supplies which do not become part of the finished project. Borrower and its agents take no responsibility for said equipment.

Additional Requirements

- Insurances specified in items 2, 3, and 4 shall name Borrower and Administrative Agent (on behalf of the Lenders) as additional insureds, binders or endorsements to insurance policies may be required.
- All insurances shall contain a provision allowing insured to waive subrogation rights against other parties prior to loss except workers' compensation.
- All insurances shall be secured from financially responsible insurance carriers qualified to do business in the state in which this operation is located.
- Certificates of insurance in form and substance acceptable to Borrower and Administrative Agent and evidencing all insurances must be presented to Borrower prior to the commencement of any work of operations at the project and upon request. Such certificates shall provide that the insurer shall not cancel or terminate coverage without thirty (30) days' prior written notice to Borrower and Administrative Agent.
- All notices will be received by the following:

For Administrative Agent:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Facsimile No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Head of Portfolio Operations
Facsimile No.: 866 267 7680

— and —

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

B. Minimum Insurance Requirements For Major Contractors

1. Workers Compensation and Employer-Liability Coverage

- Statutory Workers Compensation coverage
- Employers Liability — \$1 million policy limit
- Thirty (30) days notice of cancellation

2. General Liability Coverage

Limits of Liability: \$1 million combined single limit for bodily injury, personal injury or property damage per occurrence, \$2 million aggregate per project or location, \$2 million Products & Completed Operations

“Occurrence” form, including:

- Premises/Operations Liability
- Blanket Contractual Liability, including coverage for all liability assumed under this contract
- Products & Completed Operations
- Pollution coverage for losses arising out of a hostile fire
- “XCU” Hazards must be covered
- Thirty (30) days notice of cancellation to Borrower and Administrative Agent as a condition of cancellation

3. Business Automobile Coverage

- Limit of Liability-. \$1 million combined single limit per accident for bodily injury or property damage
 - Business Auto policy form, including:
— coverage for “any auto” which includes autos owned, hired, and non-
-

owned autos

— Thirty (30) days notice of cancellation

4. Umbrella Liability Coverage

- Limit of Liability: Not less than \$5 million, except steel erectors, crane operators, and other high hazard operations, not less than \$20 million.

5. Property Insurance

All contractors and subcontractors shall be responsible for all loss or damage to contractors' tools, equipment sheds, and any other materials or supplies which do not become part of the finished project.

Additional Requirements

- Insurances specified in items 2, 3, and 4 shall name Borrower and Administrative Agent (on behalf of the Lenders) as additional insureds.
- All insurances shall contain a provision allowing insured to waive subrogation rights against other parties prior to loss.
- All insurances shall be secured from financially responsible insurance carriers qualified to do business in the state in which this operation is located.
- Certificates of insurance in form and substance acceptable to Borrower and Administrative Agent and evidencing all insurances must be presented to the owner prior to the commencement of any work of operations at the project and upon request. Such certificates shall provide that the insurer shall not cancel or terminate coverage without thirty (30) days' prior written notice to the owner and lender.

All notices will be received by the following:

For Administrative Agent:

Address for Notices to

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention: Legal Director
Facsimile No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas, 29th Floor
New York, New York 10036
Attention:
Facsimile No.: 866 267 7680

— and —

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

C. Owner Controlled Insurance Program (“OCIP”) or Wrap-Up Program

Borrower may satisfy the on site Commercial General Liability Workers Compensation and Umbrella Liability insurance requirements of Section 3.1(1) and this Schedule for Borrower, Construction Manager and Major Contractors by and through placement of a Wrap Up or OCIP Insurance Program.

If this type of Liability insurance program is selected by Borrower, it shall meet all of the requirements of coverage as set forth elsewhere in Section 3.1(1) and this Schedule.

The overall limits of insurance required under this form of insurance program shall include Umbrella Liability insurance with a \$100 million per occurrence and Annual Aggregate Minimum Limit, and shall contain Products and Completed Operations liability discovery period of not less than 24 months.

This Wrap-Up Program shall contain Cross Suits coverage and allow for separation of insured.

All other coverage required of contractors shall continue to be required.

D. Minimum Insurance Requirements For Architects & Engineers

1. Workers Compensation and Employers Liability Coverage

*Statutory Workers Compensation coverage

*Employers Liability — \$1 million policy limit

*Thirty (30) days notice of cancellation

2. General Liability Coverage

Limits of Liability: \$1 million combined single limit for bodily injury, personal injury or property damage per occurrence, \$2 million aggregate per project or location, \$2 million Products & Completed Operations

“Occurrence” form, including:

- Premises/Operations Liability
- Blanket Contractual Liability, including coverage for all liability assumed under this contract
- Products & Completed Operations
- Pollution coverage for losses arising out of a hostile fire
- “XCU” Hazards must be covered
- Thirty (30) days notice of cancellation to owner and lender as a condition of cancellation

3. Business Automobile Coverage

- Limit of Liability: \$1 million combined single limit per accident for bodily injury or property damage
- Business Auto policy form, including:
 - coverage for “any auto” which includes autos owned, hired, and non-owned autos
 - Thirty (30) days notice of cancellation

4. Professional Liability

- Architects & Engineers Professional Liability covering errors and/or omissions in the performance of professional services in conjunction with this project.
 - Limits of \$20 million each claim and annual aggregate are required. Coverage must continue throughout the term of the job and continue until the project is accepted by the owner. The coverage shall provide for a five (5)-year discovery period after acceptance in which claims can be made. coverage may be provided through an Owner Protective Policy.
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ADVANCE CONDITIONS

Part A — Initial Advance

Part B — General Conditions

PART A. CONDITIONS PRECEDENT TO EFFECTIVENESS OF ACQUISITION LOAN COMMITMENTS AND PROJECT LOAN COMMITMENTS AND TO INITIAL ACQUISITION LOANS AND PROJECT LOANS.

The effectiveness of the Commitments and the obligation of the Lenders to make the initial Loans are subject the Administrative Agent's receipt, review, approval and/or confirmation of the following, at Borrower's cost and expense, each in form and content satisfactory to the Administrative Agent in its sole discretion (such conditions not to be duplicative to the extent they are the same matters required as conditions precedent to the effectiveness of the Building Loans that are being advanced concurrently therewith under the Building Loan Agreement):

ORGANIZATIONAL AND AUTHORIZATION DOCUMENTS; OPINIONS; OTHER DOCUMENTATION RELATING TO BORROWER, BORROWER PARTIES AND OTHER PERSONS

1. All documents evidencing the formation, organization, valid existence, good standing of and for Borrower and each Borrower Party, and the authorization, execution, delivery and performance of the Loan Documents and Project Documents by Borrower and each Borrower Party, including a certified organizational chart for Borrower and Borrower Parties.
 2. Legal opinions issued by counsel for Borrower and each Borrower Party, opining as to the due organization, valid existence and good standing of Borrower and each Borrower Party; as to the due authorization, execution, delivery, enforceability and validity of the Loan Documents with respect to Borrower and each Borrower Party (and including opinions with respect to non-contravention, perfection, choice of law and usury); and as to such matters concerning the zoning and entitlements for the Project, compliance with Applicable Law (including the Affordable Housing Requirements) and such other matters as Administrative Agent and Administrative Agent's counsel reasonably may specify.
 3. Current Uniform Commercial Code searches, and litigation, bankruptcy and judgment reports, as requested by Administrative Agent, with respect to Borrower and Borrower Parties.
 4. Copies of the most recent financial statements of Borrower certified by an officer of the Borrower and each Borrower Party, if applicable, and copies of the most recent audited annual financial statement of Guarantor, and certificates dated the Closing Date and signed by an Authorized Officer of Borrower and each Borrower Party stating that (i) such financial statements are true, complete and correct and (ii) no change shall have occurred in the financial condition of Borrower or any Borrower Party which would have a Material Adverse Effect on the Project, or on Borrower's or any Borrower Party's ability to repay the Loans or otherwise perform its obligations under the Loan Documents. Further, there shall not exist any material default by Borrower or any Borrower Party under any loan, financing or similar arrangement with any lender.
-

5. Satisfactory financial review and background checks (including such background checks as deemed necessary by Administrative Agent and Lenders to comply with the Patriot Act) of Borrower and Borrower Parties.

6. Opening balance sheet for Borrower.

LOAN DOCUMENTS; CLOSING CERTIFICATES; APPRAISAL

7. The Loan Documents, executed by Borrower and, as applicable, each Borrower Party.

8. A certificate of an Authorized Officer of Borrower, dated as of the Closing Date, certifying that: (i) the representations and warranties of Borrower and each Borrower Party contained in the Loan Documents are true and correct in all material respects on and as of such date as if made on and as of such date (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such date), and (ii) no Potential Default or Event of Default has occurred and is continuing on such date.

9. An Appraisal, such that the aggregate amount of the Commitments shall not exceed seventy percent (70%) of the aggregate value of the Project. The Appraisal shall run in favor of "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon."

TITLE; SURVEY

10. An ALTA policy or policies of title insurance satisfactory to Administrative Agent with respect to the Acquisition Loans, the Project Loans and the Building Loans (collectively, the "**Title Policies**"), issued by the Title Insurer together with evidence of the payment of all premiums due thereon, (a) insuring Administrative Agent for the benefit of the Lenders, in an amount equal to the aggregate amount of the Commitments, that Borrower is lawfully seized and possessed of a valid and subsisting fee simple interest in the Land and Improvements and that the Mortgages constitute valid fee simple mortgages or deeds of trust liens on the Land and Improvements subject to no Liens other than the Permitted Encumbrances applicable thereto and (b) providing (i) affirmative insurance or endorsements for coverage against all mechanics' and materialmen's liens, (ii) a pending disbursements clause, (iii) such other affirmative insurance, endorsements and reinsurance as Administrative Agent may require, and (iv) evidence of payment of real estate and other municipal charges through the Closing Date. The form of the Title Policies and all endorsements thereto shall be approved by Administrative Agent in its sole discretion. The Title Policies shall name as the insured "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon"

11. A survey of the Project (the "**Survey**") in form and content, and prepared by a registered land surveyor, satisfactory to Administrative Agent. The Survey shall be certified to "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the

foregoing, all of whom may rely thereon” in accordance with a surveyor’s certificate in form and substance satisfactory to Administrative Agent.

12. Evidence that all of the land parcels required to develop the Project per the final Plans and Specifications are owned by Borrower and are encumbered by the Mortgages and insured by the Title Policies.

INSURANCE

13. A certified copy of, or certificates of insurance with respect to, the insurance policies required under Section 3.1(1) of this Agreement (inclusive of the insurance policies required under Schedule 3.1(1)(J)), together with evidence of the payment of all premiums therefor.

GOVERNMENT APPROVALS; COMPLIANCE WITH LAW

14. Originals (or copies certified by an Authorized Officer of Borrower to be true copies) of all Government Approvals referred to in the Permitting Schedule, other than those expressly provided for in said Schedule to be obtained at a later time (together with, if requested by Administrative Agent, an opportunity to review (or certified copies of) all correspondence referred to in such Government Approvals and all applications for such Government Approvals).

15. Evidence satisfactory to Administrative Agent of final approval from Borrower’s Architect and the New York City Department of Buildings of Project design and specifications.

16. Evidence satisfactory to Administrative Agent that the Land is and, upon completion thereof, the Improvements will be in compliance with all Applicable Law (including zoning laws) and any applicable covenants, conditions and restrictions affecting the Land.

17. Receipt, review and acceptance by Administrative Agent of a Phase I environmental report and, if applicable, a Phase II environmental report for the Project.

PROJECT DOCUMENTS; CONSENTS AND AGREEMENTS; GOVERNMENT APPROVALS

18. Copies of the Construction Management Agreement, certified by Borrower as being true, correct and complete, and in each case in form and substance satisfactory to Administrative Agent.

19. True and correct copies of each of the Project Documents (including all amendments thereto), certified as such by an Authorized Officer of Borrower, together with evidence that (a) each of the Project Documents has been duly executed and delivered by each Person that is a party thereto and is in full force and effect; (b) neither Borrower nor, to the best of Borrower’s knowledge, any other Person which is party to any of the Project Documents, is in default thereunder beyond any applicable cure and notice periods; (c) no term or condition thereof shall have been amended, modified or waived without the prior consent of Administrative Agent. The form and substance of each of the Project Documents shall be satisfactory to Administrative Agent.

20. A true and correct copy of the Construction Management Agreement certified as such by an Authorized Officer of Borrower and evidence that no term or condition of such contract shall have been modified, amended, supplemented and/or waived without the prior consent of Administrative Agent, together with financial statements for the Construction Manager. The form and substance of the Construction Management Agreement, and the financial statements of the Construction Manager, shall be satisfactory to Administrative Agent.

21. A certificate of the Construction Manager in favor of Administrative Agent (on behalf of the Lenders) certifying that the Construction Schedule and the Budget (as it relates to Hard Costs) are realistic and can be adhered to in completing the Construction Work for the Improvements in accordance with the Plans and Specifications.

22. A true and correct copy of Borrower's Architect's Agreement certified as such by an Authorized Officer of Borrower and evidence that no term or condition of Borrower's Architect's Agreement shall have been modified, amended, supplemented and/or waived without the prior consent of Administrative Agent. The form and substance of Borrower's Architect's Agreement shall be satisfactory to Administrative Agent.

23. A schedule of the identity of the Major Contractors for the Improvements representing at least eighty percent (80%) of the cost of the completion of the Project Completion Work for the Improvements (including the Major Contracts for the mechanical, electrical and plumbing work and any other Major Contractors deemed reasonably appropriate by Administrative Agent), and copies of the executed Major Contracts entered into with such Major Contractors and all modifications, amendments and/or supplements thereto with respect thereto, together with a certificate of an Authorized Officer of Borrower certifying that (A) the copies of the Major Contracts attached to such certificate are true, correct and complete in all respects; (B) such Major Contracts attached to such certificate are in full force and effect; and (C) neither Borrower, nor the Construction Manager nor the applicable Major Contractor is in default thereunder. The form and substance of the Major Contracts shall be satisfactory to Administrative Agent.

24. Evidence satisfactory to the Administrative Agent that the Project is eligible to obtain and receive a partial exemption of real property taxes for the Improvements for a twenty-five (25) year period under the Industrial and Commercial Incentive Program, as of right.

PLANS AND SPECIFICATIONS; BUDGET; CONSTRUCTION SCHEDULE; REPORTS AND STUDIES

25. Receipt, review, and approval by Administrative Agent and the Construction Consultant of the final Plans and Specifications for the Improvements, including any construction, architectural and engineering drawings, sealed by the applicable Design Professionals.

26. The delivery by the Construction Consultant to Administrative Agent of the Construction, Cost and Plan Review in form and substance satisfactory to Administrative Agent.

27. The Budget as approved by Administrative Agent, which shall include all Project Costs for the Improvements and shall be sufficient to complete the Improvements and carry the

Project through the Maturity Date based on the final Plans and Specifications. The Budget shall be such that the aggregate amount of the Commitments shall not exceed eighty percent (80%) of the aggregate Project Costs for the entire Project reflected on the Budget. To the extent that the Commitments would exceed any of the limits described in this section, they shall be automatically reduced to an amount not in excess of the limits described in this section.

28. The Construction Schedule, together with (if any Construction Work has been commenced prior to the Closing Date) evidence satisfactory to Administrative Agent that the development of the Construction Work is proceeding in accordance with the Construction Schedule and the Budget.

29. Receipt, review, and acceptance by Administrative Agent of (i) Site Assessments relating Project; (ii) seismic studies showing a probable maximum loss of less than 20% for the Project; and (iii) soils reports, engineering reports, geotechnical reports and other reports and studies in each case as required by Administrative Agent and prepared in accordance with Administrative Agent's scope and by consultants engaged by Administrative Agent or, if consented to by Administrative Agent, engaged by Borrower with reliance rights with respect to such reports and studies expressly granted in writing to Administrative Agent and its on behalf of the Lenders and the respective successors and assigns of each of the foregoing. All such reports and studies shall be in a form approved by Administrative Agent, and shall be certified to Administrative Agent (on behalf of the Lenders and their successors and assigns) in a form reasonably requested by Administrative Agent which may include certification to additional participants, co-lenders and/or investors. Such reports and studies shall run in favor of "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon".

PAYMENT OF INITIAL EQUITY CONTRIBUTION, FEES, EXPENSES AND COSTS

30. There shall have been made by Borrower unreimbursed equity contributions to the Project in an aggregate amount equal to the Initial Equity Contribution, and Borrower shall have delivered to Administrative Agent evidence satisfactory to it that Borrower has made such contribution, including, without limitation, a certificate of an Authorized Officer of Borrower certifying thereto and itemizing the uses of such contributions, such certificate to be accompanied by backup materials documenting the amount of such contributions and the use of same; provided, however, the Administrative may, in its sole discretion, waive this requirement for the closing of the Loan, as long as such requirement is satisfied prior to or contemporaneously with the initial advance of proceeds of the Loan.

31. Payment to Administrative Agent in accordance with the Fee Letters of the upfront fee and arrangement fee described therein.

32. Payment of all fees and commissions payable to real estate brokers, mortgage brokers, or any other brokers or agents in connection with the Loans, such evidence to be accompanied by any waivers or indemnifications deemed necessary by Administrative Agent.

33. Payment of Administrative Agent's costs and expenses in underwriting, documenting, and closing the transaction, including fees and expenses of Administrative Agent's inspecting engineers, consultants, and outside counsel.

34. Payment of all expenses and premiums in connection with the issuance of the Title Policy and all recording charges, mortgage taxes and filing fees payable in connection with recording the Mortgages and the filing of the Uniform Commercial Code financing statements related thereto in the appropriate offices.

35. Payment of any due and payable real estate taxes and assessments with respect to the Project remaining unpaid on the Closing Date.

LEASES:

36. Receipt, review, and acceptance by Administrative Agent of (i) the leases with the Existing Tenants, and (ii) for each of the leases with the Existing Tenants, (1) written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by the Existing Tenants and confirming the term, rent, and other provisions and matters relating to the leases and (2) written subordination and attornment agreements, in form and substance satisfactory to Administrative Agent, executed by the Existing Tenants, whereby, among other things, such tenants subordinate their interest in the Project to the Loan Documents and agree to attorn to Administrative Agent (on behalf of the Lenders) and its successors and assigns upon foreclosure or other transfer of the Project after an Event of Default.

37. Evidence satisfactory to Administrative Agent that, as of the Closing Date, the aggregate fixed minimum rent of the retail leases shall be no less than \$5,150,000.

OTHER

38. Such other documents or items as Administrative Agent or its counsel reasonably may require, including, without limitation the delivery of such documents or items as may be indicated on a closing checklist distributed to Borrower by Administrative Agent or its counsel.

39. No material change shall have occurred in the financial markets which would have, in Administrative Agent's judgment, a material adverse affect on the Project or any obligor's ability to repay the Loans or otherwise perform its obligations under the Loan Documents. No condemnation or adverse zoning or usage change shall have occurred or shall have been proposed with respect to the Project; no law, regulation, ordinance, moratorium, injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any third Person or Governmental Authority, which would have, in the Administrative Agent's judgment, a Material Adverse Effect on the Borrower and/or the Project.

40. Evidence that the other conditions set forth in [Article 4](#) have been satisfied.

41. Evidence that all of the conditions precedent to the effectiveness of the initial Building Loans under the Building Loan Agreement shall have been satisfied.

PART B. GENERAL CONDITIONS TO ALL LOANS

The obligation of the Lenders to make any Loans shall be subject to Administrative Agent's receipt, review, approval and/or confirmation of the following, each in form and content satisfactory to Administrative Agent in its sole discretion:

1. There shall exist no Potential Default or Event of Default (both before and after giving effect to the requested advance).
 2. The representations and warranties contained in this Agreement and in all other Loan Documents shall be true and correct in all material respects on and as of the date of the making of such Loan with the same force and effect as if made on and as of such date.
 3. Such advance shall be secured by the Mortgages and the other Security Documents, subject only to the Permitted Encumbrances, as evidenced by a Date Down Endorsement satisfactory to Administrative Agent.
 4. Borrower shall have paid Administrative Agent's costs and expenses in connection with such advance (including title charges and attorneys' fees and expenses).
 5. No change shall have occurred in the financial condition of Borrower or any Borrower Party or in the Project which would have a Material Adverse Effect.
 6. No proceeding with respect to condemnation, adverse possession, zoning change or usage change proceeding shall have occurred or shall have been threatened against the Project the Project shall not have suffered any damage by fire or other casualty which has not been repaired or is not being restored in accordance with this Agreement; no Applicable Law or injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any Governmental Authority, which would have, in Administrative Agent's judgment, a material adverse effect on the Project or Borrower's or any Borrower Party's ability to perform its obligations under the Loan Documents.
 7. The Construction Work (or such part thereof as may have been constructed at the time of any borrowing) shall have been constructed substantially in accordance with the Plans and Specifications and the Construction Schedule (as each may have been modified in accordance with this Agreement) and all applicable Government Approvals; and there shall exist no Unsatisfactory Work.
 8. The Construction Consultant shall have reviewed and approved the disbursement requested in the Request for Loan Advance delivered by Lead Borrower with respect to such Loan. Such Request for Loan Advance shall include copies of all documents, contracts, invoices, bills, construction records, lien waivers, Change Orders, and drawings, plans and specifications as the Construction Consultant shall reasonably require, to enable the Construction Consultant to timely review each Request for Loan Advance.
 9. Borrower shall have provided the Construction Consultant, Administrative Agent and the Lenders, or their representatives, prompt and reasonable access to the Project, in order to inspect the Construction Work then completed.
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10. Administrative Agent shall have received the following items in connection with each Loan:

(a) A Request for Loan Advance as provided in Section 2.6(4) and 4.24.2 duly executed by an Authorized Officer of Borrower, together with the required attachments thereto;

(b) Such invoices, contracts and other supporting data as Administrative Agent may reasonably require to evidence that all Project Costs for which disbursement is sought have been incurred and are then due and payable;

(c) Except for Liens insured against pursuant to the Title Policies, (i) sworn unconditional waivers of lien from contractors, subcontractors, materialmen, suppliers and vendors, covering all work for which funds have been advanced pursuant to a prior disbursement and (ii) at Administrative Agent's election, sworn conditional waivers of lien from contractors, subcontractors, materialmen, suppliers and vendors, covering all work of such Persons for which funds are being advanced pursuant to the then current Request for Loan Advance, all in compliance with the Lien Law;

(d) Copies of any Change Orders which have not been previously furnished to Administrative Agent and the Construction Consultant, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(e) Copies of all subcontracts and purchase orders which have been executed or modified, amended and/or supplemented since the last Loan, together with (i) any Bonds or Subguard Policies relating to such subcontracts (to the extent required under this Agreement), (ii) a certificate by an Authorized Officer of Borrower certifying that the delivered items are true, accurate and complete copies of the originals thereof, and (iii) Consents and Agreements in the applicable form attached to the General Assignment from each Major Contractors who has entered into a Major Contract but has not previously delivered a Consent and Agreement;

(f) Inventory of materials and equipment stored on the Project and evidence that Borrower has complied with all of the requirements of Section 4.8 relating to such stored materials;

(g) Copies of all Government Approvals (to the extent required as of such date) not previously delivered to Administrative Agent, certified by an Authorized Officer of Borrower;

(h) If any material dispute arises between or among Borrower, the Construction Manager or any Major Contractor, a written summary of the nature of such dispute;

(i) If the Budget shall have been modified, copies of all such modifications, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(j) Copies of all amendments to the Construction Schedule not previously delivered to Administrative Agent, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(k) Promptly after the completion of the construction of the foundation or other support elements for the Construction Work, Borrower shall provide to Administrative Agent a current survey of the Land showing all improvements located thereon and complying with the requirements set forth in Part A, paragraph 11 and shall obtain a foundation endorsement to the Title Policies in form satisfactory to Administrative Agent insuring that all foundations and other support elements are located within applicable property and setback lines and do not encroach upon any easements or rights of way; and

(l) To the extent not previously delivered to Administrative Agent, evidence showing compliance with the insurance provisions of Section 3.1.

11. All of the conditions set forth in Part A above shall remain satisfied and all applicable conditions in Article 4 shall have been satisfied, including the application of all Operating Revenues in accordance with Section 4.6.

12. The Loans shall be In Balance, and all material actions required to have been undertaken or obtained prior to the date of such disbursement pursuant to the Permitting Schedule and the Marketing Plan and Schedule shall have been undertaken or obtained as applicable.

13. Operating Revenues shall have been applied in accordance with Sections 4.1(1) and 4.6(1).

14. To the extent not previously delivered to Administrative Agent, Borrower shall provide evidence of the payment of all costs, expenses and other charges covered by previous Requests for Loan Advances for which advances of Loans have previously been made.

15. Administrative Agent has reasonably determined withholding such disbursement in whole or in part is not required by the Lien Law.

16. Such other documents and items as Administrative Agent may reasonably request.

PERMITTING SCHEDULES
(See Attached)

ORGANIZATIONAL CHART

TENANT IMPROVEMENT ALLOWANCES

(See Attached)

Section: 11
Block: 3033
Lots: 9 and 12
County: Bronx
Premises: 2502 Webster Avenue, 2504 Webster Avenue, and 400 — 414 East Fordham Road, a/k/a
4747-4763 Park Avenue, a/k/a 2506-2526 Webster Avenue, Bronx, New York

BUILDING LOAN AGREEMENT

Between

**ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
as Lead Borrower,**

**ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC,
a Delaware limited liability company
FORDHAM PLACE OFFICE, LLC
a Delaware limited liability company
as Borrower,**

**The LENDERS Party Hereto,
as Lenders**

and

**EUROHYPO AG, NEW YORK BRANCH
as Administrative Agent
Date: As of October 5, 2007**

This Agreement was prepared by:

RIEMER & BRAUNSTEIN LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.

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BUILDING LOAN AGREEMENT

BUILDING LOAN AGREEMENT is entered into as of October 4, 2007 among **ACADIA-PA EAST FORDHAM ACQUISITIONS, LLC**, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("**Lead Borrower**"); **FORDHAM PLACE OFFICE, LLC**, a limited liability company duly organized and validly existing under the laws of the State of Delaware ("**Fordham Office**", hereinafter, jointly and severally with Lead Borrower, and singly and collectively, "**Borrower**") each of the lenders that is a signatory hereto identified under the caption "**LENDERS**" on the signature pages hereof and each lender that becomes a "Lender" after the date hereof pursuant to Section 12.23 (individually, a "**Lender**" and, collectively, the "**Lenders**"); and **EUROHYPO AG, NEW YORK BRANCH**, as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the "**Administrative Agent**").

RECITALS

A. Lead Borrower is the fee owner of that certain tract of land located in the County of Bronx, State of New York and being more fully described in Exhibit A attached hereto (the "**Land**") and the improvement currently located thereon.

B. Borrower proposes to renovate, alter, improve, install and construct the Improvements (as hereinafter defined) on the Land and, in connection therewith has requested and applied to the Lenders for a loan in the amount of \$75,339,243.00 (the "**Total Building Loan Commitment**") for the purposes of paying certain of the Cost of Improvement pertaining to the Project (as hereinafter defined) including certain costs with respect to the construction and equipping of the Improvements, all of which said costs constitute a Cost of Improvement (as hereinafter defined). The Lenders have agreed to make such loans on and subject to the terms and conditions hereinafter set forth.

C. Borrower has also requested and applied to the Lenders for (i) a loan in the amount of \$18,000,000.00 for the purpose of re-financing the acquisition of its interest in the Land and (ii) a loan in the amount of \$1,930,757.00 for the purpose of paying certain costs pertaining to the Premises, which costs do not constitute a Cost of Improvement. The Lenders have agreed to make such loans pursuant to the Acquisition and Project Loan Agreement, of even date herewith, entered into by Borrower, the Lenders and Administrative Agent (the "**Project Loan Agreement**").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

Section 1.1 Certain Definitions.

Unless separately defined in this Agreement, all capitalized terms used herein shall have the meaning assigned to such terms in the Project Loan Agreement. In addition, as used herein, the following terms have the meanings indicated:

- (1) “**Administrative Agent**” has the meaning assigned in the Preamble.
- (2) “**Agreement**” means this Building Loan Agreement, as the same may be modified, amended and/or supplemented and in effect from time to time.
- (3) “**Borrower**” has the meaning assigned in the Preamble. With respect to the definition of “Borrower”, except where the context otherwise provides, (i) any representations contained herein of Borrower shall be applicable to each Borrower, (ii) any affirmative covenants contained herein shall be deemed to be covenants of each Borrower and shall require performance by all Borrowers, (iii) any negative covenants contained herein shall be deemed to be covenants of each Borrower, and shall be breached if any Borrower fails to comply therewith, (iv) the occurrence of any Event of Default with respect to any Borrower shall be deemed to be an Event of Default hereunder, and (v) any Indebtedness and/or obligations of Borrower shall be deemed to include any Indebtedness and/or obligations of the Borrowers, or any Indebtedness and/or obligations of any one of them.
- (4) “**Borrower’s Architect**” means Greenberg Farrow Architects, or any replacement thereof approved by Administrative Agent.
- (5) “**Borrower’s Architect’s Agreement**” means that certain agreement entitled Professional Service Fee Proposals, dated as of March 30, 2005, July 11, 2005 and August 1, 2005, between Borrower, as owner, and Borrower’s Architect, as architect, as the same may be amended.
- (6) “**Building Loan**” and “**Building Loans**” have the meanings assigned in Section 2.1(1) means the loans to be made by the Lenders to Borrower under this Agreement and all other amounts evidenced or secured by the Loan Documents.
- (7) “**Building Loan Commitment**” means, as to each Lender, the obligation of such Lender to make a Building Loan in a principal amount up to but not exceeding the amount set opposite the name of such Lender on Schedule 1 under the caption “Building Loan Commitment” or, in the case of a Person that becomes a Lender pursuant to an assignment permitted under Section 12.23, as specified in the respective instrument of assignment pursuant to which such assignment is effected. The original aggregate principal amount of the Building Loan Commitment is \$75,339,243.00.

(8) "**Building Loan Mortgage**" means the Building Loan Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing in the amount of the Total Building Loan Commitment and executed, dated and delivered by Borrower to Administrative Agent (on behalf of the Lenders) on the Closing Date, securing the Building Loan Notes, as such mortgage may be modified, amended and/or supplemented and in effect from time to time.

(9) "**Building Loan Notes**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(10) "**Change Order**" means any modification, amendment and/or supplement to (a) the Plans and Specifications, (b) the Budget, (c) the Construction Schedule, (d) the Construction Management Agreement, a Major Contract or any contract, or, (e) with respect to any Tenant Improvement Plans, any modification, amendment and/or supplement thereto which increases the cost of Tenant Improvement Work above the budgeted cost therefor previously approved by Administrative Agent.

(11) "**Completion Date**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(12) "**Consent and Agreement**" means the consent and agreement executed by the parties thereto in accordance with the General Assignment and substantially in the same form as attached thereto.

(13) "**Construction Completion**" means the date that the following conditions shall be satisfied:

(a) a valid temporary certificate of occupancy has been obtained for the entire Project (including the entire Retail Component including improvement work required to be completed by tenants pursuant to the Approved Leases, any Tenant Improvement Work, and those portions of the Office Component required to have been completed by the original Maturity Date pursuant to the Budget and the Construction Schedule approved by Administrative Agent);

(b) all on-site and off-site work has been completed; and

(c) Administrative Agent shall have received written certification from the Construction Consultant, acting reasonably, that (a) the Project Completion Work has been substantially completed in accordance with the Plans and Specifications, subject to completion of Punch List Items, (b) the deliveries required in paragraphs 1 and 2 of Schedule 4 — Part C shall have been received and reasonably approved by Administrative Agent.

(14) "**Construction Consultant**" means IVI International, Inc. and/or such other consultant as Administrative Agent may engage on behalf of the Lenders to examine the Plans and Specifications, changes in the Plans and Specifications and cost breakdowns and estimates, to make periodic inspections of the work of construction of the Project on behalf of the Lenders, and to advise and render reports to Administrative

Agent and the Lenders concerning the same and to provide such other advice in respect of the Project as Administrative Agent may from time to time request.

(15) “**Construction, Cost and Plan Review**” has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(16) “**Construction Management Agreement**” means the contract for construction management services in connection with the construction of the Improvements to be entered into between Borrower and the Construction Manager, as approved by Administrative Agent pursuant to Schedule 4 — Part A, as the same may be modified, supplemented and/or amended from time to time in accordance with the terms of this Agreement. The Construction Management Agreement shall provide for a guaranteed maximum fixed price for the Construction Work consistent with the Budget, and shall provide that the Construction Management Fee shall be disbursed based upon percentage of completion with final payments to be made upon the issuance of all certificates of occupancy, release of all liens by contractors, materialmen and suppliers, and the Loans being In Balance.

(17) “**Construction Management Fee**” means the construction management fee payable under the Construction Management Agreement.

(18) “**Construction Manager**” means ACRS, Inc. or another construction manager for the Construction Work reasonably acceptable to Administrative Agent.

(19) “**Construction Schedule**” means the schedule prepared and certified by Borrower and verified by the Construction Consultant establishing a timetable for commencement and completion of the Construction Work (other than Tenant Improvement Work), showing, on a monthly updated basis, the anticipated and actual progress of the Construction Work and indicating that Construction Completion will be achieved on or before the Completion Date. To the extent Borrower is performing any Tenant Improvement Work, the Construction Schedule will be amended to include the timetable for the completion of such Tenant Improvement Work, as the same may from time to time hereafter be modified in accordance with the terms of this Agreement.

(20) “**Construction Work**” means all work and materials (including all labor, equipment and fixtures with respect thereto and including demolition, asbestos removal and Tenant Improvement Work) necessary to construct the Improvements, all of which shall be performed and completed in accordance with and as contemplated by the Plans and Specifications (or Tenant Improvement Plans in the case of Tenant Improvement Work) and all Applicable Laws.

(21) “**Contracts**” means, collectively, the Major Contracts and the Minor Contracts.

(22) “**Cost of Improvement**” shall have the meaning defined in Paragraph 5 of Section 2 of Article I of the Lien Law, as such term applies to the Improvements being financed with the proceeds of the Building Loans.

(23) "**Design Professional**" means, collectively, Borrower's Architect, the structural engineer, the mechanical engineer and other design professionals relating to the Construction Work, as reasonably approved by Administrative Agent, and any reference in this Agreement to a certification or other document to be executed by the applicable Design Professional shall mean one or more of such Design Professionals designated by Administrative Agent as the Design Professionals to execute such certification or document, depending on the areas of expertise covered by such certification or document.

(24) "**Event of Default**" has the meaning assigned to such term in Article 10.

(25) "**General Assignment**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(26) "**Hard Costs**" means the aggregate costs of all labor, materials, equipment and fixtures necessary for completion of construction of the Improvements, as more particularly set forth in the Budget.

(27) "**Improvements**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(28) "**Land**" has the meaning assigned to such term in the Recitals.

(29) "**Lender**" and "**Lenders**" have the meanings assigned in the Preamble.

(30) "**Lien Law**" shall mean the Lien Law of the State of New York, as amended from time to time.

(31) "**Major Contract**" means any contract, trade contract, material agreement or supply contract relating to the construction of the Improvements or a component thereof in the amount of \$2,000,000 or more.

(32) "**Major Contractor**" means any contractor or trade contractor or supplier who is a party to a Major Contract.

(33) "**Maturity Date**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(34) "**Minor Contract**" means, with respect to the Construction Work, any contract, trade contract, material agreement or supply contract relating to the construction of the Improvements or a component thereof that is not a Major Contract.

(35) "**Minor Contractor**" means any contractor or trade contractor or supplier who is a party to a Minor Contract.

(36) "**Mortgages**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(37) "**Plans and Specifications**" means the final plans and specifications for the construction of the Project Completion Work delivered by Borrower to Administrative Agent, prepared by Borrower's Design Professionals and approved by Administrative Agent, the Construction Consultant and, to the extent then required, by any applicable Governmental Authority and such other parties whose approval or consent may be required under any law, regulation, prior agreement, and/or this Agreement and all modifications, amendments and/or supplements thereof made by Change Orders permitted pursuant to the terms of this Agreement. A list of the presently existing Plans and Specifications is attached hereto as Schedule 1.1(37).

(38) "**Project**" means, collectively, (a) the Land, together with any air rights and other rights, privileges, easements, hereditaments and appurtenances thereunto relating or appertaining to the Land, (b) the Improvements, together with all fixtures and equipment (to the extent owned by Borrower) required for the operation of the Improvements, (c) all building materials and personal property (to the extent owned by Borrower) related to the foregoing and (d) all other items described in the granting clauses of the Mortgages.

(39) "**Project Completion Work**" means in the case of the Project, all of the work to be performed by Borrower and/or its contractors in connection with the construction of the Improvements as more particularly described in the Plans and Specifications.

(40) "**Project Costs**" means, collectively, the Project Loan Costs, the Hard Costs and Soft Costs.

(41) "**Project Documents**" means the documents set forth on Schedule 1.1(41) attached hereto, as the same may be modified, supplemented and/or amended from time to time as permitted under the Loan Documents.

(42) "**Project Loan Agreement**" has the meaning assigned to such term in the Recitals.

(43) "**Project Loan Costs**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(44) "**Project Loan Mortgage**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(45) "**Project Work Substantial Completion Conditions**" means the conditions to the completion of the Project Completion Work set forth in Schedule 4 — Part C.

(46) "**Punch List Items**" means minor construction items to be completed or constructed with respect to the Project Completion Work or the Tenant Improvement Work which do not materially interfere either with the use of the Project Completion Work or the acceptance and occupancy of any space leased to a tenant.

(47) "**Retainage**" has the meaning assigned to such term in Section 4.3(1).

(48) "**Soft Costs**" means interest payable on the Building Loans and all other costs in the Budget which constitute a Cost of the Improvement, excluding Hard Costs, which relate to the construction of the Improvements and the operation of the Project during the term of this Agreement.

(49) "**Tenant Improvement Allowances**" has the meaning assigned to such term in Section 1.1 of the Project Loan Agreement.

(50) "**Tenant Improvement Plans**" means the plans prepared by the engineers and/or architects for Tenant Improvement Work under each Approved Lease and approved by Borrower and Borrower's Architect, to be certified by Borrower to Administrative Agent and the Lenders as approved by the applicable tenant, Borrower, all required Governmental Authorities, and within the Budget and, to the extent any approval is required under the applicable lease, as reasonably approved by Administrative Agent.

(51) "**Tenant Improvement Work**" means work to be performed and paid by Borrower, if any, pursuant to Approved Leases.

(52) "**Unavoidable Delay**" means any delay due to strikes, acts of God, fire, earthquake, floods, explosion, actions of the elements, other accidents or casualty, declared or undeclared war, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, lockouts, tenant delays, actions of labor unions, condemnation, court orders, laws, rules, regulations or orders of Governmental Authorities, or other cause beyond the reasonable control of Borrower; provided that, in each of the foregoing cases, (a) such cause is not within the control of Borrower, (b) Lead Borrower gives notice of such delay to Administrative Agent within thirty (30) days of occurrence of the event resulting in such delay and, after the initial notification, promptly after request of Administrative Agent or the Construction Consultant, notifies Administrative Agent and the Construction Consultant of the status of such delay, (c) after giving effect to the consequences of each such delay, the Loans shall remain In Balance subject to Borrower curative payments or funding and the Budget Line Item for interest shall remain sufficient at all times despite such delay subject to Borrower curative payments or funding, (d) such delay shall not adversely disrupt Borrower's ability to obtain any Government Approvals substantially in accordance with the Permitting Schedule (e) such delay will not give rise to any tenant termination or cancellation rights under a Major Lease, or Borrower obtains an extension from each tenant equal to such delay so that each of the leases is at all times in full force and effect and there remains sufficient time to complete all Tenant Improvement Work and (f) Borrower shall use all commercially reasonable efforts to mitigate the delay caused by such event. For the purposes hereof, Unavoidable Delays shall not include delays caused by Borrower's lack of or inability to procure monies to fulfill Borrower's commitments and obligations under this Agreement or the other Loan Documents.

(53) “**Unsatisfactory Work**” means any Construction Work which Administrative Agent and/or the Construction Consultant has reasonably determined has not been completed in a good and workmanlike manner, and, to the extent any Construction Work is not specifically addressed in the construction drawings and specifications, in a manner consistent with sound design principles and/or sound construction practices, or in substantial conformity with the Plans and Specifications, or in accordance with all Applicable Law.

ARTICLE 2
LOAN TERMS

Section 2.1 The Commitments, Loans and Notes.

(1) **Building Loans.** Each Lender severally agrees, on the terms and conditions of this Agreement, to make loans (each advance of such a loan being a “**Building Loan**” and collectively, the “**Building Loans**”) on a non-revolving basis to Borrower in Dollars from time to time in amounts equal to its Proportionate Share of the aggregate amount of Building Loans to be made of such time; provided, however, that in no event shall the aggregate principal amount advanced by each Lender exceed the amount of the Building Loan Commitment of such Lender. The Building Loans shall be advanced from time to time as provided in this Agreement for the payment of all or part of the Cost of Improvement in connection with the construction of the Project and shall be funded and repaid in accordance with this Agreement.

(2) **Requests for Building Loan Advances.** With respect to each Building Loan, Lead Borrower shall give Administrative Agent (and the Construction Consultant) a Request for Loan Advance as provided in Section 4.2. Administrative Agent shall give each Lender notice of any such Request for Loan Advance in accordance with Section 2.6(4) of the Project Loan Agreement. Not later than 12:00 noon New York time on the date specified for each Building Loan, each Lender shall make available for the account of its Applicable Lending Office to Administrative Agent as specified by Administrative Agent, in immediately available funds, such Lender’s Proportionate Share of each Building Loan to be made pursuant hereto. After Administrative Agent’s receipt of such funds and upon fulfillment of the applicable conditions referred to in Article 4 and Schedule 4, Administrative Agent shall make such funds available to Lead Borrower by depositing the same, in immediately available funds, in an account designated by Lead Borrower by the end of business on the applicable advance date, to be applied in accordance with the terms of this Agreement.

(3) **Changes of Commitments.**

(a) The respective Building Loan Commitments shall reduce pro rata automatically by reason of any prepayment of the Building Loans applicable thereto in the amount of any such prepayment.

(b) If the Maturity Date is extended in accordance with Section 2.5, all of the unused Building Loan Commitments then remaining at the commencement of the extended loan period shall be automatically terminated.

(c) The Building Loan Commitments, once terminated or reduced, may not be reinstated. Each termination or reduction of the Building Loan Commitments shall be made ratably among the Lenders in accordance with their respective Building Loan Commitments.

(4) **Lending Offices.** The Building Loans of each Lender shall be made and maintained at such Lender's Applicable Lending Office for Building Loans of such Type.

(5) **Severall Obligations.** The failure of any Lender to make any Building Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Building Loan, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Building Loan to be made by such other Lender.

(6) **Notes.** The Building Loans made by each Lender shall be evidenced by the Building Loan Notes, payable to such Lender in a principal amount equal to its Proportionate Share of the applicable Building Loans covered by such notes.

Section 2.2 Conversion or Continuations of Building Loans.

Subject to the terms of this Agreement and the Project Loan Agreement, Borrower may borrow the Building Loans by means of Base Rate Loans and/or LIBOR-based Loans, and such Building Loans may be prepaid, Converted or Continued pursuant to the Project Loan Agreement.

Section 2.3 Interest Rate; Late Charge.

Borrower hereby promises to pay to Administrative Agent for account of each Lender interest on the unpaid principal amount of each Building Loan (which may be Base Rate Loans and/or LIBOR-based Loans) made by such Lender for the period from and including the date of such Building Loan to but excluding the date such Loan shall be paid in full, at the rates per annum and in the manner provided in the Project Loan Agreement, including, without limitation, Section 2.3 of the Project Loan Agreement.

Section 2.4 Terms of Payment.

Borrower hereby promises to pay to Administrative Agent for account of each Lender the payments of principal and interest due on the Building Loans in accordance with the Building Loan Notes and the Project Loan Agreement, which is hereby incorporated by reference. Borrower hereby promises to pay to Administrative Agent for the account of each Lender the principal of such Lender's outstanding Building Loans, together with accrued and unpaid interest (including accrued and unpaid Additional Interest, if applicable), and all other amounts due under the Loan Documents, on the Maturity Date.

Section 2.5 Extension of Maturity Date.

(1) Borrower may, at its option, extend the term of the then outstanding principal amount for a period of six (6) months to the First Extension Maturity Date, subject to the satisfaction of the conditions contained in Section 2.5(1) of the Project Loan Agreement.

(2) Borrower may, at its option, extend the term of the then outstanding principal amount for a period of six (6) months to the Second Extension Maturity Date, subject to the satisfaction of the conditions contained in Section 2.5(2) of the Project Loan Agreement.

(3) Borrower may, at its option, extend the term of the then outstanding principal amount for a period of six (6) months to the Third Extension Maturity Date, subject to the satisfaction of the conditions contained in Section 2.5(3) of the Project Loan Agreement.

Any extension pursuant to this Section 2.5 shall be otherwise subject to all of the other terms and provisions of this Agreement and the other Loan Documents.

Section 2.6 Payments; Pro Rata Treatment; Etc.

The method of funding the Building Loans, pro rata treatment of the Building Loans among the Lenders, computation of interest, notices, sharing of payments and other related matters shall be subject to the terms of the Building Loan Notes and Section 2.6 of the Project Loan Agreement, which is hereby incorporated by reference.

Section 2.7 Yield Protection; Etc.

Provisions relating to LIBOR-based Loans, including, without limitation, increased costs, inability to determine any LIBOR Rate, illegality, treatment of affected Building Loans, compensation for broken funding, Taxes and replacement of Lenders shall be subject to the terms of the Building Loan Notes and Section 2.7 of the Project Loan Agreement, which is hereby incorporated by reference.

Section 2.8 Agency Fee.

Until payment in full of all obligations under this Agreement and the other Loan Documents, Borrower shall pay to Administrative Agent, for its sole account, the Agency Fee in accordance with the Fee Letter.

Section 2.9 Exit Fee.

With respect to the repayment or prepayment of principal under the Loans for any reason whatsoever (whether such repayment or prepayment of the Loans is made voluntarily or involuntarily or as a result of the occurrence of an Event of Default pursuant to which the Administrative Agent has accelerated the obligations of the

Borrower under the Loan Documents or otherwise), Borrower shall pay to Administrative Agent the Exit Fee in accordance with Section 2.9 of the Project Loan Agreement.

ARTICLE 3

INSURANCE, CONDEMNATION, AND IMPOUNDS

Section 3.1 Insurance, Condemnation, Impounds.

Provisions relating to insurance, condemnation and impounds, including, without limitation, the use of casualty and condemnation proceeds shall be subject to the terms of Article 3 of the Project Loan Agreement, which is hereby incorporated by reference.

ARTICLE 4

DISBURSEMENTS OF THE BUILDING LOANS

Section 4.1 General Conditions.

(1) Subject to (a) Borrower's satisfaction of the applicable conditions precedent set forth in Schedule 4 and (b) Borrower's compliance with the applicable provisions of this Article 4, the Lenders shall disburse the proceeds of each Building Loan within ten (10) Business Days after Administrative Agent's receipt of all of the documents and items to be delivered or received pursuant to Schedule 4 and this Article 4; provided, however, that at no time shall the Lenders be obligated to:

(a) advance to Lead Borrower more than the amount that Borrower has funded from its own monies or an existing loan or is then required to fund to the party seeking payment or, in the case of reimbursement, to the party seeking reimbursement (subject to Retainage, if applicable),

(b) make an advance if the Building Loans are not In Balance in accordance with Section 4.3 of the Project Loan Agreement,

(c) subject to possible reallocation in accordance with this Agreement and the Project Loan Agreement, advance proceeds of a Building Loan in an amount in excess of the Budget Line Items set forth in the Budget, as the same may be adjusted in accordance with the terms of this Agreement,

(d) make any Building Loans to the extent any Operating Revenues have not been applied in accordance with Section 4.6(1) of the Project Loan Agreement,

(e) except as provided in Section 4.3 hereof, advance any portion of the Retainage,

(f) except as provided in Section 4.4 hereof, make any Building Loans with respect to materials not yet incorporated into the Improvements,

(g) make an advance in connection with any Change Order for which Administrative Agent's approval is required under Section 9.3(2) which has not been approved by Administrative Agent in accordance with Section 9.3(2),

(h) make any Building Loans for any Tenant Improvement Work if it relates to a lease that is not an Approved Lease that meets the requirements of Section 4.5 hereof,

(i) make any Building Loans for any contractor until (A) in the case of a Major Contractor, such Major Contractor has been approved by Administrative Agent and has duly executed and delivered to Administrative Agent the applicable consent and attornment agreement in substantially the form attached to the General Assignment and (B) in the case of any contractor, has duly entered into a contract with the Construction Manager with respect to its applicable portion of the Construction Work, a copy (certified by an authorized officer of Borrower) of such contract has been delivered by Lead Borrower to Administrative Agent; or

(j) make any Building Loans with respect to any sums due a Design Professional, until such Design Professional has duly entered into a contract with Borrower, a copy (certified by an Authorized Officer of Borrower) of such contract has been delivered by Lead Borrower to Administrative Agent, and such Design Professional has duly executed and delivered to Administrative Agent the applicable Consent and Agreement in substantially the form attached to the General Assignment.

(2) Notwithstanding anything to the contrary contained in this Agreement, the Lenders shall have no obligation to advance any Building Loan unless Administrative Agent is, at all times, reasonably satisfied that the Improvements can be constructed Lien free, substantially in accordance with the Plans and Specifications (or the Tenant Improvement Plans in the case of Tenant Improvement Work) for the sums set forth in the Budget (or, if more, Borrower has furnished the difference in cash or cash equivalents, subject to the provisions of Sections 4.3, 4.4 and 4.5 of the Project Loan Agreement, by the Completion Date or, with respect to Tenant Improvement Work, such date as shall be required for the completion of the applicable Tenant Improvement Work under an Approved Lease. Administrative Agent will endeavor to give notice to Lead Borrower of its intention not to authorize disbursement of any Building Loan proceeds based on the foregoing, but neither the Lenders nor Administrative Agent shall have any liability hereunder should Administrative Agent fail to do so, and no failure by Administrative Agent to give such notice shall affect Administrative Agent's or any Lender's rights under this subsection (2).

Section 4.2 Procedure for Making Disbursements of Building Loan Proceeds.

(1) After the Closing Date, disbursements shall be made from time to time as construction progresses pursuant to a Request for Loan Advance, but no more frequently than once in each calendar month.

(2) Each Request for Loan Advance shall (a) be duly executed by an Authorized Officer on behalf of Lead Borrower, (b) be submitted to Administrative Agent and the Construction Consultant not less than ten (10) Business Days prior to the proposed disbursement date for such Building Loans, (c) specify the items to be paid or reimbursed with the proceeds of the requested Building Loans, (d) include the documentation required to be included therewith under Schedule 4 and (e) be in the minimum amounts required under Section 2.6(3) of the Project Loan Agreement.

(3) All advances of the Building Loans shall be made for the payment of Project Costs in accordance with the Budget upon Borrower's satisfaction of the applicable conditions set forth in this Article 4 and Schedule 4 — Parts A, B, and C, as applicable.

(4) In the event that Lead Borrower does not request a disbursement within thirty (30) days after the previous disbursement of a Building Loan, Borrower shall nonetheless within such thirty (30) day period and during each subsequent thirty (30) day period in which Borrower does not request a disbursement of the Building Loan, satisfy the conditions precedent to disbursements set forth in this Agreement.

Section 4.3 Retainage.

(1) Disbursement of the available proceeds of each Building Loan with respect only to Hard Costs and Tenant Improvement Work shall be limited to ninety percent (90%) of the value of the Hard Costs and Tenant Improvement Work set forth in the applicable Request for Loan Advance until fifty percent (50%) of the work covered by a particular contract has been completed (as determined by the Construction Consultant, and, thereafter, the amount disbursed shall be increased to one hundred percent (100%) of the Hard Costs and Tenant Improvement Work performed under that particular contract), with the remainder of the sums due for the work performed under such contract to be withheld and disbursed in compliance with Section 4.3(2) below; provided, however, that (a) in no event shall the percentage of the sums due which is withheld be less than the retainage percentage set forth in any contract or subcontract for such portion of the Improvements or any applicable lease with respect to Tenant Improvement Work and (b) if Administrative Agent has, in its sole and absolute discretion, approved a contract or lease requiring less than the above retainage, then Administrative Agent shall disburse the proceeds of the Building Loans as if the retainage applicable under such contract or lease were provided for in this Section. The amounts authorized to be withheld pursuant to this paragraph (1) being collectively referred to herein as the "**Retainage**." No Retainage will apply to Soft Costs.

(2) The Lenders shall advance Building Loans pursuant to a Request for Loan Advance to pay portions of the Retainage upon Borrower's compliance with the following conditions to the satisfaction of Administrative Agent:

(a) all of the work under such contract or the Tenant Improvement Work under the respective Approved Lease, as the case may be, is finally completed in accordance with the terms of such contract or Approved Lease and

the applicable Plans and Specifications or Tenant Improvement Plans, as the case may be, and Administrative Agent receives a certification to that effect from an Authorized Officer of Borrower and Borrower's Architect and such work has been approved by the Construction Consultant, acting reasonably;

(b) the work performed by such contractor has been approved, to the extent such approval is then required, by the Governmental Authorities having jurisdiction over the same and the applicable permits with respect to such work, if any, have been issued;

(c) the contract or the Approved Lease, as the case may be, provides for such early release of the applicable Retainage;

(d) the applicable contractor delivers to Administrative Agent a final and complete unconditional release of Lien with respect to such work, subject to the receipt of the Retainage;

(e) Administrative Agent shall, if requested, have received copies of any warranties, guaranties or "as built" drawings relating to such work to the extent required to be delivered by the contractor under the applicable contract for such work; and

(f) all other applicable requirements and conditions with respect to such advance of Building Loan proceeds are satisfied.

Section 4.4 Stored Materials.

(1) The Lenders shall advance the proceeds of Building Loans with respect to materials and equipment that are included in the Budget and are not yet incorporated into the Improvements as of the date of the applicable Building Loans, but are temporarily stored either on-site or off-site so long as Administrative Agent shall have received the following items, each in form and substance reasonably satisfactory to Administrative Agent:

(a) evidence that Borrower has an obligation under the applicable contract, subcontract or purchase order to pay for such materials and equipment prior to their installation;

(b) evidence that the ownership of such materials and equipment is, or upon payment will be, vested in Borrower free of any liens and claims of third parties, including, without limitation, bills of sale and conditional lien waivers from the respective contractor, contractor or vendor and that such material and equipment are clearly marked to indicate the ownership thereof by Borrower;

(c) evidence that on-site stored materials are included within the coverages of insurance policies carried by Borrower or proof of other insurance (which shall include a standard mortgagee endorsement or its equivalent) which has been approved by Administrative Agent;

(d) evidence reasonably acceptable to Administrative Agent and the Construction Consultant that the stored materials are reasonably protected against vandalism (casualty), theft or damage and are stored in the U.S.A. with respect to off-site stored materials;

(e) evidence that Building Loans made by the Lenders for said materials do not, at any one time, exceed, in the aggregate, \$1,000,000 for on-site stored materials and, in the aggregate, \$1,000,000 for off-site stored materials, inclusive in each case of the amount requested;

(f) evidence that Administrative Agent (on behalf of the Lenders) has a perfected first security interest in such material prior to or simultaneous with the making of such Building Loans;

(g) as to materials stored off-site only, evidence that the materials, equipment and parts are under the control of the applicable supplier and are being kept at bonded warehouse sites or otherwise stored in a designated and secured area satisfactory to Administrative Agent and the Construction Consultant, in each case in the U.S.A. and reasonably approved by Administrative Agent and the Construction Consultant; and that such equipment and parts shall have been clearly designated, marked or tagged to indicate ownership by Borrower and the security interest of Administrative Agent (on behalf of the Lenders) therein;

(h) evidence that Administrative Agent (on behalf of the Lenders) has a perfected first security interest (i.e., Uniform Commercial Code filings or other applicable filings) in such materials, equipment and parts prior to or simultaneous with the making of such Building Loans, which requirement shall, if requested by Administrative Agent in connection with the first advance for property stored in the applicable state (and in connection with any other advance in such state when Administrative Agent reasonably believes that the collateral is substantially different from the type of collateral covered by the first opinion), be supported by the opinion of a local counsel in the state where the applicable equipment and parts are stored; and

(i) evidence reasonably acceptable to Administrative Agent and the Construction Consultant as to the identity, quality and quantity of same; and

(j) evidence that all other applicable requirements and conditions with respect to such advance of Building Loan proceeds have been satisfied.

Section 4.5 Tenant Improvement Work.

(1) Building Loans shall be made to Borrower in connection with Tenant Improvement Allowances and Tenant Improvement Work in accordance with this Section 4.5.

(2) The first request for disbursement for any Tenant Improvement Allowance in connection with a specific Approved Lease shall be accompanied by the following, all

of which shall be subject to the reasonable approval of Administrative Agent to the extent Borrower has approval rights with respect thereto pursuant to the terms of the applicable Approved Lease (any such approval or disapproval to be made by Administrative Agent within a reasonably sufficient time for Borrower to comply with any time limits set forth in the applicable Approved Lease for Borrower's response):

- (a) all documentation required to be delivered by the applicable tenant pursuant to its respective Approved Lease;
- (b) if not already delivered to Administrative Agent, a copy of the fully executed Approved Lease (already approved by Administrative Agent) covering such leased space;
- (c) copies of all contracts, if not previously delivered to Administrative Agent, for the performance of such Tenant Improvement Work;
- (d) a cost breakdown for each trade performing such Tenant Improvement Work in such leased space, and an estimated commencement and completion date;
- (e) an estimate of all costs of the Tenant Improvement Work to be performed in such leased space;
- (f) the Tenant Improvement Plans for the applicable leased space, together with a certificate from Borrower's Architect or the tenant's architect that such Tenant Improvement Plans comply with all Applicable Law affecting the Project and such leased space; and
- (g) copies of all Government Approvals required to commence such Tenant Improvement Work.

(3) The Lender's obligation to make disbursements of any Building Loans for Tenant Improvement Work shall be subject to the further condition precedent that all of the following requirements shall have been completed to the reasonable satisfaction of Administrative Agent:

(a) To the extent tenant is obligated to provide such things to Borrower, Lead Borrower shall have furnished to Administrative Agent and the Construction Consultant copies of all Change Orders, contracts or purchase orders relating to Tenant Improvement Work performed pursuant to the contracts described in this Section 4.5; and

(b) loans shall be made for Tenant Improvement Allowances only to the extent the applicable tenant is then entitled to receive such Tenant Improvement Allowance pursuant to the terms of its applicable Approved Lease;

(c) no mechanic's liens shall have been filed against the Project in connection with the work being performed under the applicable Approved Lease; and

(d) Borrower shall have complied with all the other applicable conditions precedent to a disbursement of a Building Loan contained in Schedule 4 and Article 4 of this Agreement.

(4) Administrative Agent's obligation to make disbursements of the final Building Loans to Lead Borrower for Tenant Improvement Work for any Approved Lease is subject to the further condition precedent that all of the following requirements shall have been completed to the reasonable satisfaction of Administrative Agent:

(a) Construction Completion has been achieved with respect to the applicable Tenant Improvement Work free of mechanics' liens unless such liens shall be bonded or otherwise removed of record or the Title Company shall have provided affirmative coverage in accordance with Schedule 4 — Part C;

(b) Administrative Agent and the Construction Consultant shall have received the following items in connection with each Building Loan:

(i) copies of all final waivers of lien (or conditional lien waivers) and sworn statements from contractors, subcontractors and material suppliers relating to the applicable Tenant Improvement Work;

(ii) a certificate from Borrower's Architect, the tenant's architect or another architect satisfactory to Administrative Agent that (A) Construction Completion has been achieved with respect to the applicable Tenant Improvement Work in accordance with the applicable Tenant Improvement Plans therefor previously approved by Administrative Agent and (B) the applicable Tenant Improvement Work complies with all applicable building codes;

(iii) copies of all applicable Government Approvals required by any Governmental Authority for the occupancy and operation of the space covered by the applicable Approved Lease;

(iv) an estoppel certificate, in a form acceptable to Administrative Agent, from the tenant under the applicable Approved Lease pursuant to which such Tenant Improvement Work was constructed stating that such tenant accepts the Tenant Improvement Work subject to Punch List Items (which, if incomplete on the date of final disbursement for such Tenant Improvement Work, Administrative Agent may hold back an amount equal to (x) 115% of the estimated cost of completing such items from the final disbursement minus (y) any Retainage that Administrative Agent is still holding with respect to the applicable Tenant Improvement Work, such amount to be paid to Lead Borrower on the completion of such items and the satisfaction of the requirements of

Section 4.3 with respect to Retainage, which Borrower shall diligently complete);

(c) Administrative Agent shall have received written advice from the Construction Consultant that the applicable Construction Completion has been achieved with respect to Tenant Improvement Work in accordance with the Tenant Improvement Plans previously approved by Administrative Agent; and

(d) All of the applicable conditions precedent to any Building Loan under Schedule 4 and Article 4 of this Agreement shall have been satisfied.

Section 4.6 Unsatisfactory Work.

If the Construction Consultant or Administrative Agent shall reasonably determine that a portion of the Construction Work for which Loans are sought is Unsatisfactory Work, Administrative Agent shall be entitled to withhold from such Loans amounts sufficient to pay for the Unsatisfactory Work and shall advance only the balance of such Loan until such time as Unsatisfactory Work has been corrected to the reasonable satisfaction of the Construction Consultant and Administrative Agent.

Section 4.7 Direct Loan Advances by Administrative Agent.

The Lenders shall, at the option of Administrative Agent, advance all or any part of any particular Building Loan either (1) to Lead Borrower for disbursement in accordance with a Request for Loan Advance, (2) during an Event of Default, directly to the Construction Manager, a Major Contractor, other contractor, subcontractor, material supplier or other party any costs payable to such party, (3) during an Event of Default, at Borrower's expense, to the Title Company which shall pay said monies to the parties as so instructed by Administrative Agent or (4) as contemplated by Section 1.01(b) of the Guaranty of Completion (whether the applicable work is being performed by the Guarantor or Administrative Agent). The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization to the Lenders to make such direct advances provided for in clauses (2), (3) and (4) above and no further authorization from Borrower shall be necessary to warrant such direct advances, and all such direct advances shall be secured by the Security Documents as fully as if made directly to Borrower, regardless of the disposition thereof by any party so paid. During an Event of Default, at Administrative Agent's request, any advance of Building Loan proceeds made by and through the Title Company may be made pursuant to the provisions of a construction escrow agreement in the form then in use by such company with such modifications thereto as are reasonably required by Administrative Agent. Borrower agrees to join as a party to such escrow agreement and to comply with the requirements set forth therein (which shall be in addition to and not in substitution for the requirements contained in this Agreement) and to pay the fees and expenses of the Title Company charged in connection with the performance of its duties under such construction escrow agreement.

Section 4.8 No Waiver or Approval by Reason of Loan Advances.

The making of any Building Loans by the Lenders shall not be deemed an acceptance or approval by Administrative Agent or the Lenders (for the benefit of Borrower or any third party) of the Construction Work or other work theretofore done or constructed or to the Lenders' obligations to make further Building Loans, nor, in the event Borrower is unable to satisfy any condition, shall any such failure to insist upon strict compliance have the effect of precluding Administrative Agent or the Lenders from thereafter declaring such inability to be an Event of Default as herein provided. Administrative Agent's and/or the Lenders' waiver of, or failure to enforce, any conditions to or requirements associated with any Building Loans in any one or more circumstances shall not constitute or imply a waiver of such conditions or requirements in any other circumstances.

Section 4.9 Construction Consultant.

Administrative Agent (on behalf of the Lenders) reserves the right to employ the Construction Consultant and any other consultants necessary, in Administrative Agent's reasonable judgment, to review Requests for Loan Advance and inspect all construction and the periodic progress of the same, the reasonable cost therefor to be borne by Borrower as a loan expense. Borrower shall make available to Administrative Agent and the Construction Consultant on reasonable notice during business hours, all documents and other information (including, without limitation, receipts, invoices, lien waivers and other supporting documentation to substantiate the costs to be paid with the proceeds of any Request for Loan Advance) which any contractor or other Person entitled to payment for Construction Work is required to deliver to Borrower and shall use its commercially reasonable efforts to obtain any further documents or information reasonably requested by Administrative Agent or the Construction Consultant in connection with any Loan or the administration of this Agreement. Borrower acknowledges and agrees that the Construction Consultant shall have no responsibilities or duties to Borrower, and shall be employed solely for the benefit of Administrative Agent and the Lenders. No default of Borrower will be waived by an inspection by Administrative Agent or the Construction Consultant. In no event will any inspection by Administrative Agent or the Construction Consultant be a representation that there has been or will be compliance with the Plans and Specifications or that the Construction Work is free from defective materials or workmanship. Any and all provisions of this Agreement in respect of the Construction Consultant shall be enforceable solely by, and at the option of, Administrative Agent, and Borrower shall not be a third-party beneficiary thereof. Any and all reports, advice or other information provided by the Construction Consultant to Administrative Agent and/or the Lenders or otherwise produced by or in the possession of the Construction Consultant shall be confidential and Borrower shall have no right to obtain or review same.

Section 4.10 Authorization to Make Loan Advances to Cure Borrower's Defaults.

If an Event of Default shall occur, Administrative Agent (subject to the provisions of Section 14.3 of the Project Loan Agreement) may (but shall not be required to)

perform any of such covenants and agreements with respect to which Borrower is in Event of Default. Any amounts expended by Administrative Agent in so doing and any amounts expended by Administrative Agent in connection therewith shall constitute a Building Loan and be added to the outstanding principal balance of the Building Loans, and the Lenders shall make the applicable Building Loans to fund any such disbursements. The authorization hereby granted is irrevocable, and no prior notice to or further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

Section 4.11 Reserved.

Section 4.12 Administrative Agent's Right to Make Loan Advances in Compliance with the Guaranty of Completion.

Any Building Loan proceeds disbursed by Administrative Agent as contemplated by Section 1.01(b) of the Guaranty of Completion (whether the applicable work is being performed by the Guarantor or Administrative Agent) shall constitute a Building Loan and be added to the outstanding principal balance of the Building Loans, and the Lenders shall make the applicable Building Loans to fund any such disbursements. The authorization hereby granted is irrevocable and no prior notice to or further direction or authorization from Borrower is necessary for Administrative Agent to make such disbursements.

Section 4.13 No Third-Party Benefit.

This Agreement is solely for the benefit of the Lenders, Administrative Agent, lead Borrower and Borrower. All conditions of the obligations of the Lenders to make advances hereunder are imposed solely and exclusively for the benefit of the Lenders and may be freely waived or modified in whole or in part by the Lenders at any time if in their sole discretion they deem it advisable to do so, and no Person other than Lead Borrower or Borrower (provided, however, that all conditions have been satisfied) shall have standing to require the Lenders to make any Building Loan advances or shall be a beneficiary of this Agreement or any advances to be made hereunder.

ARTICLE 5

ENVIRONMENTAL MATTERS

Borrower hereby repeats and agrees to observe all representations, warranties and covenants contained in Article 5 of the Project Loan Agreement with the same force and effect as if set forth herein in their entirety.

ARTICLE 6
LEASING MATTERS

Borrower hereby repeats and agrees to observe all covenants contained in Article 6 of the Project Loan Agreement with the same force and effect as if set forth herein in their entirety.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

Borrower hereby reaffirms and ratifies the representations and warranties set forth in Article 7 of the Project Loan Agreement and elsewhere in the Project Loan Agreement with the same force and effect as if set forth herein in their entirety. In addition, Borrower hereby represents and warrants to Administrative Agent and the Lenders that:

Section 7.1 Cost of Improvement.

Each item included in the Budget is included within the definition of Cost of Improvement. A true statement under oath, verified by Borrower, in full compliance with Section 22 of the Lien Law is attached hereto as Exhibit B.

Section 7.2 Design Professionals' Certificates.

To Borrower's best knowledge, the certifications set forth in the certificates of the Design Professionals which Borrower has furnished in accordance with Schedule 4— Part A, paragraph 25 and Part C, paragraph 1(e) hereof are true and correct.

Section 7.3 Tenant Improvement Work.

Schedule 7.3 attached hereto sets forth a true and complete summary of all Tenant Improvement Work currently provided for in the Leases; provided that Schedule 7.3 shall be subject to update as Approved Leases are executed or amended in accordance herewith.

ARTICLE 8
FINANCIAL REPORTING

Borrower hereby reaffirms and ratifies the representations and warranties set forth in Article 8 of the Project Loan Agreement and elsewhere in the Project Loan Agreement with the same force and effect as if set forth herein in their entirety.

ARTICLE 9

COVENANTS

Borrower hereby repeats and agrees to observe all covenants contained in Article 9 of the Project Loan Agreement with the same force and effect as if set forth herein in their entirety. In addition, Borrower covenants and agrees with the Lenders and Administrative Agent that, so long as any Commitment or Loan is outstanding and until payment in full of all amounts payable by the Borrower hereunder:

Section 9.1 Payment for Labor and Materials.

Borrower shall promptly pay when due all invoices and costs for labor, materials, and specifically fabricated materials incurred in connection with the Project and never permit to exist beyond the due date thereof in respect of the Project or any part thereof any Lien, even though inferior to the Liens of the Loan Documents. Borrower may contest the validity or amount of such invoices and Liens so long as (1) Lead Borrower notifies Administrative Agent that it intends to contest such claim or demand, (2) Borrower provides Administrative Agent with an indemnity, bond or other security reasonably satisfactory to Administrative Agent (including an endorsement to Administrative Agent's title insurance policy insuring against such claim or demand) assuring the discharge of Borrower's obligations for such claims and demands, including interest and penalties, and (3) Borrower is diligently contesting the same by appropriate legal proceedings in good faith and at its own expense and concludes such contest prior to the date on which the Project could be sold, forfeited, terminated, cancelled or lost for non payment, (4) such proceeding shall not subject Borrower, Administrative Agent or any Lender to criminal or civil liability (other than civil liability as to which adequate security has been provided pursuant to clause (2) above), and (5) Borrower shall promptly upon final determination thereof make payment in accordance with such determination.

Section 9.2 Inspection.

Borrower shall permit representatives of Administrative Agent, the Construction Consultant and the Lenders, at reasonable times and on reasonable advance notice, to examine its books of record and account, to make copies and abstracts therefrom, and to discuss its affairs, finances and accounts with its principal officers, engineers and independent accountants (and by this provision Borrower authorizes said accountants to discuss with such Persons such affairs, finances and accounts, but after prior notice to Borrower of such discussions). Without limiting the foregoing, representatives of the Construction Consultant, Administrative Agent and the Lenders shall have the right at reasonable times and on reasonable advance notice to (a) inspect the Project and all materials to be used in connection with the construction of the Improvements from time to time and to witness the construction thereof, (b) to conduct such environmental and engineering inspections and studies as Administrative Agent may require, provided that a maximum of one (1) such inspection or study may be conducted in any twelve month period unless (i) an Event of Default has occurred, or (ii) Administrative Agent has a

reasonable suspicion of Hazardous Materials or other condition at or near the Project that would warrant such an inspection or study, (c) to examine all detailed plans and shop drawings in connection with the construction of the Improvements and (d) meet with the representatives of the Design Professionals, the Construction Manager and the Major Contractors to discuss the status and issues relating to the construction of the Improvements (and by this provision Borrower authorizes Borrower's Architect, the Construction Manager and the Major Contractors to cooperate and discuss with such Persons such construction matters, but after reasonable prior notice to Borrower of such discussions). Borrower shall at all times cause a complete set of the original plans (and all supplements thereto) relating to the construction of the Project to be maintained at the Project or construction office and available for inspection by such representatives.

Section 9.3 Project Construction and Completion.

(1) Borrower shall construct the Construction Work in a good and workmanlike manner in accordance with generally accepted engineering and construction practice, and in material conformance with the recommendations set forth in each soils report, seismic report, geotechnical report and other engineering reports submitted to Administrative Agent and accepted by it pursuant to Schedule 4, the Plans and Specifications, the applicable Tenant Improvement Plans, the Construction Schedule and Applicable Law.

(2) Borrower shall timely commence the Construction Work for the Improvements on or prior to February 16, 2007, and shall cause Construction Completion by the Completion Date (other than Punch List Items which shall be completed by Borrower with diligence following the Completion Date, and Tenant Improvement Work which shall be timely completed by Borrower in accordance with the applicable Approved Lease).

(3) Construction Completion shall have occurred by the Completion Date.

(4) Borrower shall not commence construction of any Construction Work, or any particular component thereof, nor permit any tenant so to do, until Borrower or any such tenant has obtained all Government Approvals required under Applicable Law for the commencement of construction of such Construction Work or such component thereof, as the case may be.

(5) Once begun, Borrower shall cause the construction of the Construction Work to be prosecuted with diligence in accordance with the Construction Schedule, subject to Unavoidable Delay.

(6) Lead Borrower shall deliver to Administrative Agent, on demand, copies of all contracts, bills of sale, statements, receipted vouchers and agreements under which Borrower claims title to any materials, fixtures or articles incorporated in the Improvements.

(7) Borrower shall, upon demand of Administrative Agent based upon the advice of the Construction Consultant, correct any Unsatisfactory Work; and the advance

of any proceeds of any Loan shall not constitute a waiver of Administrative Agent's right to require compliance with this covenant with respect to any such Unsatisfactory Work. None of Administrative Agent, the Lenders or the Construction Consultant shall have any affirmative duty to Borrower or any third party to inspect for Unsatisfactory Work or other defects or to call them to the attention of Borrower or anyone else.

(8) Borrower shall (and shall cause each Affiliate of Borrower party thereto to):

(a) perform and observe in all material respects all of its covenants and agreements contained in the Construction Management Agreement, each Major Contract, each other Project Document and each Government Approval to which it is a party or by which the Project or any portion thereof is bound;

(b) take all reasonable and necessary action to prevent the termination, in accordance with the terms thereof or otherwise, of the Construction Management Agreement, any Major Contract, any other material Project Document and any Government Approval;

(c) enforce in accordance with its terms each material covenant or obligation set forth in the Construction Management Agreement, each Major Contract, each other Project Document and each Government Approval;

(d) cause Lead Borrower to promptly give Administrative Agent copies of any default or violation or other material notices given by or on behalf of Borrower received by or on behalf of Borrower from any other Person under the Construction Management Agreement, any Major Contract, any other material Project Document or any Government Approval;

(e) promptly replace, unless it is commercially reasonable not to do so, any defaulting contractor, subcontractor, material supplier or surety, and Lead Borrower shall promptly deliver all required information and documents to Administrative Agent regarding each replacement contractor, subcontractor, material supplier or surety;

(f) if Administrative Agent in its reasonable judgment determines that one or more elements of the Construction Work will not be completed according to the Construction Schedule, or that the Project Completion Work will not be completed by the Completion Date, reschedule the work of construction to permit timely completion. Within fifteen (15) days after receiving such a request from Administrative Agent, Lead Borrower shall deliver to Administrative Agent a revised Construction Schedule showing timely completion of such work; and

(g) take all such commercially reasonable action to achieve the purposes described in clauses (a), (b), (c), (d), (e) and (f) of this Section 9.3(7) as may from time to time be reasonably requested by Administrative Agent.

(9) Lead Borrower shall deliver to Administrative Agent and the Construction Consultant copies of all Major Contracts for Administrative Agent's reasonable approval and all other Minor Contracts for informational purposes entered into for the construction of the Improvements. Within twenty (20) days after receiving a request from Administrative Agent, except to the extent previously delivered, Lead Borrower shall deliver to Administrative Agent any and all of the following information and documents that Administrative Agent may specify, all in forms reasonably acceptable to Administrative Agent: (a) a current, complete and correct list showing the name and address of each contractor, subcontractor and material supplier engaged in connection with the construction of the Improvements, and the total dollar amount of each contract and subcontract (including any changes) together with the amounts paid through the date of the list; (b) true and correct copies of the most current versions of all executed contracts and Contracts identified in the list described in clause (a) above, including any changes; (c) a construction progress schedule and updated Permitting Schedule showing the progress of construction and the projected sequencing and completion times for uncompleted work and for obtaining any outstanding Government Approvals, all as of the date of the schedule; and (d) any update to any item described above, which Lead Borrower has previously delivered to Administrative Agent. After the occurrence of an Event of Default, Borrower expressly authorizes Administrative Agent to contact Borrower's Architect, each Construction Manager, any consulting engineer(s) or any contractor, subcontractor, material supplier, surety or Governmental Authority to verify any information disclosed in accordance with this Section.

(10) Administrative Agent may (and if requested by the Majority Lenders, shall) commission an Appraisal (a) upon the satisfaction of the Project Work Substantial Completion Conditions with respect to the Improvements and (b) at any other time if required by Applicable Law or accounting policy. Such Appraisal shall be completed at Borrower's expense and shall be prepared by an appraiser satisfactory to Administrative Agent.

Section 9.4 Proceedings to Enjoin or Prevent Construction.

If any proceedings are filed seeking to enjoin or otherwise prevent or declare invalid or unlawful all or any part of the Construction Work, Borrower, at its sole cost and expense, will cause such proceedings to be contested in a commercially reasonable manner, and in the event of an adverse ruling or decision, if commercially reasonable, prosecute all allowable appeals therefrom, and will, without limiting the generality of the foregoing, resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and use its best efforts to bring about a favorable and speedy disposition of all such proceedings.

Section 9.5 Agent's, Lenders' and Construction Consultant's Actions for their Own Protection Only.

The authority herein conferred upon Administrative Agent, the Lenders and/or the Construction Consultant and any action taken by the same, in making inspections, procuring sworn statements and waivers of lien, approving contracts and Contracts and

approving Plans and Specifications will be taken by such party for its or their own protection only, and none of Administrative Agent, the Lenders or the Construction Consultant shall be deemed to have assumed any responsibility to Borrower or any other party with respect to any such action herein authorized or taken by Administrative Agent, the Lenders or the Construction Consultant or with respect to the Construction Work, performance of contracts or Contracts by any contractors or subcontractors, or prevention of claims for mechanics' liens. Any review, investigation or inspection conducted by Administrative Agent, the Lenders, the Construction Consultant or any other architectural or engineering consultants retained by Administrative Agent in order to verify independently Borrower's satisfaction of any conditions precedent to advances under this Agreement, Borrower's performance of any of the covenants, agreements and obligations of Borrower under this Agreement, or the validity of any representations and warranties made by Borrower hereunder (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Administrative Agent or the Lenders of) (a) any of Borrower's representations, warranties or obligations under this Agreement or Administrative Agent's and the Lenders' reliance thereon or right to require the performance thereof or (b) Administrative Agent's or the Lenders' reliance upon any certifications of Borrower or the Design Professionals required under this Agreement or any other facts, information or reports furnished to Administrative Agent and/or the Lenders by Borrower hereunder.

Section 9.6 Sign and Publicity.

If Administrative Agent requests, Borrower shall, to the extent permitted by Applicable Law, erect a sign reasonably approved by Administrative Agent on the Project in a conspicuous location indicating that the financing for the Project has been provided by the Lenders and that Eurohypo is Administrative Agent for the Lenders. Borrower shall include in any public announcement or media release concerning the general development of the Project a statement that the Lenders have provided the financing for the Project and that Eurohypo is Administrative Agent for the Lenders.

Section 9.7 Amendment of Project Documents and Government Approvals; Change Orders.

(1) Borrower shall not, without Administrative Agent's reasonable prior consent:

- (a) take any action to cancel or terminate any material right under the Construction Management Agreement, any Major Contract, any other Project Document or any Government Approval to which it is a party;
- (b) sell, assign, pledge, transfer, mortgage, hypothecate or otherwise dispose of (by operation of law or otherwise) or encumber any part of its interest

in the Construction Management Agreement, any Major Contract, any other Project Document or any Government Approval;

(c) except in accordance with prudent construction practice, waive any material default under or breach of any material provisions of the Construction Management Agreement, any Major Contract, any other Project Document or any Government Approval, or waive, forgive, release or fail to enforce any material right, interest or entitlement, howsoever arising, under or in respect of any of the foregoing, or vary or agree to the variation in any material way of any of the foregoing or of the performance of any other Person or Governmental Authority thereunder;

(d) amend or modify any material provision of, or give any consent under, the Construction Management Agreement, any Major Contract, any other Project Document or any Government Approval (including, without limitation, the Plans and Specifications or the Construction Schedule), including, without limitation, any amendment or modification which, subject to Borrower's right to make Change Orders pursuant to the provisions of subsection (2) below, would increase or change the Budget or any Budget Line Item; or which might adversely affect the value of the security for the Loans; or which, regardless of cost, is a material change in structure, design or function; or which might delay completion of any element of the Construction Work beyond the time allotted for it in the Completion Schedule, or satisfaction of the Project Work Substantial Completion Conditions for the Project Completion Work beyond the applicable Completion Date therefor;

(e) petition, request or take any other legal or administrative action that seeks, or may reasonably be expected, to rescind, terminate or suspend the Construction Management Agreement, any Major Contract, any other Project Document or any Government Approval or amend or modify all or any material part thereof; or

(f) enter into, or permit the Construction Manager to enter into, any new Major Contract (which consent shall be conditioned upon the delivery by the Major Contractor thereunder of a Consent and Agreement).

(2) Borrower shall obtain Administrative Agent's and the Construction Consultant's reasonable approval for any Change Order that exceeds \$500,000 with respect to any single change or related group or series of changes. At such time as all Change Orders in the aggregate have exceeded \$3,000,000, Borrower shall obtain Administrative Agent's and the Construction Consultant's reasonable approval for all subsequent Change Orders.

(3) Subject to the provisions of this Section 9.7, Lead Borrower shall from time to time promptly deliver to Administrative Agent and the Construction Consultant all Change Orders, pending or executed, along with evidence that all Government Approvals relating thereto have been obtained, together with any documents related

thereto, and a written description of the proposed change and related working drawings, a written estimate of the cost of the proposed change and the time necessary to complete it and a written explanation of the reasons therefor.

Section 9.8 Lien Law.

Borrower, in compliance with Section 13 of the Lien Law covenants that it shall receive and hold the advances of the Building Loans hereunder and the right to receive the same as a trust fund for the purpose of first paying the “cost of the improvement”, as such quoted term is defined in the Lien Law, before using any part thereof for any other purpose.

Section 9.9 Reimbursement of Expenses.

Borrower shall pay or reimburse Administrative Agent and/or the Lenders on demand of the applicable party to the extent provided in Section 9.28 of the Project Loan Agreement, which section is hereby incorporated herein by reference, all of which shall constitute part of the Loans and shall be secured by the Loan Documents.

ARTICLE 10

EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default under the Loans:

Section 10.1 Project Loan Agreement.

An Event of Default shall occur under the Project Loan Agreement.

Section 10.2 Access to Project.

If (a) Administrative Agent or any of the Lenders, or its representatives or the Construction Consultant is not permitted, at all reasonable times, to enter upon the Project, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in connection therewith, and to examine all detailed plans, shop drawings and specifications which relate to the Improvements, or (b) Lead Borrower, the Construction Manager or a Major Contractor shall fail to furnish to Administrative Agent, the Construction Consultant or their authorized representatives, within a reasonable period of time after requested, copies of such plans, drawings and specifications, or copies of any invoices, Contracts, or bills of sale relating to the construction or equipping of the Improvements, and, in any of the foregoing cases such default remains uncured for a period of ten (10) days after notice thereof from Administrative Agent to Lead Borrower; provided, however, that if such default is caused as a result of the Construction Manager or a Major Contractor, such ten (10) day period shall be extended so long as Lead Borrower is diligently pursuing its rights and remedies to cause compliance by the Construction Manager or such Major Contractor.

Section 10.3 Termination/Bankruptcy of Construction Manager or a Major Contractor.

If for any reason the Construction Management Agreement or any Major Contract is terminated or if the Construction Manager or a Major Contractor becomes the subject of a bankruptcy proceeding, and Borrower does not promptly (but in no event later than thirty (30) days after any such termination or bankruptcy) replace such Construction Management Agreement or Major Contract with a substitute construction management agreement or Major Contract, as the case may be, in each case reasonably acceptable to Administrative Agent and from a new construction manager or contractor, as the case may be, reasonably approved by Administrative Agent.

Section 10.4 Unsatisfactory Work.

Borrower shall fail to cause any Unsatisfactory Work to be corrected to the reasonable satisfaction of Administrative Agent and the Construction Consultant within ten (10) Business Days after notice of such disapproval; provided, however, that if such Unsatisfactory Work cannot reasonably be corrected within such ten (10) day period, then so long as Borrower shall have commenced to cause the correction of such Unsatisfactory Work within such ten (10) day period and thereafter diligently and expeditiously proceeds to cause the correction of the same, such ten (10) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cause the correction of such Unsatisfactory Work prior to the Completion Date.

Section 10.5 Construction Work.

The Construction Work (a) is not completed on or before the Completion Date, or (b) shall, at any time, be abandoned for more than ten (10) Business Days, or discontinued for more than fifteen (15) Business days, or a delay in the Construction Work shall occur so that the same cannot, in Construction Consultant's sole judgment, be completed on or before the Completion Date.

ARTICLE 11

REMEDIES

Upon the occurrence of any Event of Default, Administrative Agent may (subject to, and in accordance with, the provisions of Section 14.3 of the Project Loan Agreement) and, upon request of the Majority Lenders shall, by written notice to Lead Borrower, pursue any one or more of the remedies set forth in the Project Loan Agreement or the other Loan Documents, concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other.

WHETHER OR NOT ADMINISTRATIVE AGENT OR THE LENDERS ELECT TO EMPLOY ANY OR ALL OF THE REMEDIES AVAILABLE TO IT UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, NEITHER ADMINISTRATIVE AGENT NOR ANY OF THE LENDERS SHALL BE LIABLE FOR THE

CONSTRUCTION OF OR FAILURE TO CONSTRUCT, COMPLETE OR PROTECT THE IMPROVEMENTS OR FOR PAYMENT OF ANY EXPENSES INCURRED IN CONNECTION WITH THE EXERCISE OF ANY REMEDY AVAILABLE TO ADMINISTRATIVE AGENT OR THE LENDERS OR FOR THE CONSTRUCTION OR COMPLETION OF THE IMPROVEMENTS OR FOR THE PERFORMANCE OR NON-PERFORMANCE OF ANY OTHER OBLIGATION OF BORROWER.

ARTICLE 12
MISCELLANEOUS

Section 12.1 Notices.

Any notice required or permitted to be given under this Agreement shall be in writing and either shall be (a) mailed by certified mail, postage prepaid, return receipt requested, (b) sent by overnight air courier service, (c) personally delivered to a representative of the receiving party, or (d) sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1) to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof. Any communication so addressed and mailed shall be deemed to be given on the earliest of (1) when actually delivered, (2) on the first Business Day after deposit with an overnight air courier service, or (3) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by Administrative Agent, a Lender, Lead Borrower or Borrower, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified above, and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 12.1. Any party may designate a change of address by written notice to each other party by giving at least ten (10) days' prior written notice of such change of address.

Section 12.2 Amendments, Waivers, Etc.

Any provision of this Agreement may be amended, modified supplemented or waived only in accordance with Section 12.2 of the Project Loan Agreement.

Section 12.3 Compliance with Usury Laws.

This Agreement shall be subject to the provisions of Section 12.3 of the Project Loan Agreement with respect to usury laws, which section is hereby incorporated herein by reference.

Section 12.4 Invalid Provisions.

If any provision of any Loan Document is held to be illegal, invalid or unenforceable, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof; the remaining provisions thereof shall remain in full effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom; and in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as a part of such Loan Document a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible to be legal, valid and enforceable.

Section 12.5 Approvals; Third Parties; Conditions.

All approval rights retained or exercised by Administrative Agent and the Lenders with respect to leases, contracts, plans, studies and other matters are solely to facilitate the Lenders' credit underwriting, and shall not be deemed or construed as a determination that the Lenders have passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person. This Agreement is for the sole and exclusive use of Administrative Agent, the Lenders, the Lead Borrower and Borrower and may not be enforced, nor relied upon, by any Person other than Administrative Agent, the Lenders, the Lead Borrower and Borrower. All conditions of the obligations of Administrative Agent and the Lenders hereunder, including the obligation to make advances, are imposed solely and exclusively for the benefit of Administrative Agent and the Lenders, their successors and assigns, and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that the Lenders will refuse to make advances in the absence of strict compliance with any or all of such conditions, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Administrative Agent and the Lenders at any time in their sole discretion.

Section 12.6 Lenders and Administrative Agent Not in Control; No Partnership.

None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to, give Administrative Agent or any Lender the right or power to exercise control over the affairs or management of Borrower, the powers of Administrative Agent and the Lenders being limited to the rights to exercise the remedies referred to in the Loan Documents. The relationship between Borrower and the Lenders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders and Borrower. Administrative Agent and the Lenders neither undertake nor assume any responsibility or duty to Borrower or to any other person with respect to the Loans, the Project or the other collateral for the Loans, except as expressly provided in the Loan Documents. Notwithstanding any other provision of the Loan Documents: (1) neither Administrative Agent nor any Lender is, nor shall be construed as, a partner, joint venturer, alter ego, manager, controlling person

or other business associate or participant of any kind of Borrower or any Borrower Party or any of their respective stockholders, members, or partners, and neither Administrative Agent nor any Lender intends to ever assume such status; (2) no Lender or Administrative Agent shall in any event be liable for any Debts, expenses or losses incurred or sustained by Borrower or any Borrower Party; and (3) no Lender or Administrative Agent shall be deemed responsible for or a participant in any acts, omissions or decisions of Borrower or any Borrower Party or any of their respective stockholders, members, or partners. Administrative Agent, the Lenders, Lead Borrower and Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between Administrative Agent, the Lenders, Lead Borrower and Borrower, or to create any equity in the Project or any other collateral for the Loan in Administrative Agent or any Lender, or any sharing of liabilities, losses, costs or expenses.

Section 12.7 Time of the Essence.

Time is of the essence with respect to this Agreement.

Section 12.8 Successors and Assigns.

Subject to the provisions of Sections 9.1 and 12.23 of the Project Loan Agreement, this Agreement shall be binding upon and inure to the benefit of Administrative Agent, the Lenders, Lead Borrower and Borrower and the respective successors and permitted assigns.

Section 12.9 Renewal, Extension or Rearrangement.

All provisions of the Loan Documents shall apply with equal effect to each and all promissory notes and amendments thereof hereinafter executed which in whole or in part represent a renewal, extension, increase or rearrangement of the Loans.

Section 12.10 Waivers.

No course of dealing on the part of Administrative Agent or any Lender, their officers, employees, consultants or agents, nor any failure or delay by Administrative Agent or any Lender with respect to exercising any right, power or privilege of Administrative Agent or any Lender under any of the Loan Documents, shall operate as a waiver thereof.

Section 12.11 Cumulative Rights.

Rights and remedies of Administrative Agent and the Lenders under the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

Section 12.12 Singular and Plural.

Words used in this Agreement and the other Loan Documents in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Agreement and the other Loan Documents shall apply to such words when used in the plural where the context so permits and vice versa.

Section 12.13 Phrases.

When used in this Agreement and the other Loan Documents, the phrase “including” shall mean “including, but not limited to,” the phrases “satisfactory to any Lender” or “satisfactory to Administrative Agent” shall mean in form and substance satisfactory to such Lender or Administrative Agent, as the case may be, in all respects, the phrases “with Lender’s consent,” “with Lender’s approval,” “with Administrative Agent’s consent” or “with Administrative Agent’s approval” shall mean such consent or approval at Lender’s or Administrative Agent’s, as the case may be, sole and absolute discretion; phrases referring to determinations or approvals to be made “in the discretion” of Administrative Agent or any Lender shall mean such determination or approval in the sole and absolute discretion of Administrative Agent or such Lender, and the phrases “acceptable to Lender” or “acceptable to Administrative Agent” shall mean acceptable to Lender or Administrative Agent, as the case may be, at such party’s sole and absolute discretion.”

Section 12.14 Exhibits and Schedules.

The exhibits and schedules attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein.

Section 12.15 Titles of Articles, Sections and Subsections.

All titles or headings to articles, sections, subsections or other divisions of this Agreement and the other Loan Documents or the exhibits hereto and thereto are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 12.16 Promotional Material.

Borrower authorizes Administrative Agent and each of the Lenders to issue press releases, advertisements and other promotional materials in connection with Administrative Agent’s or such Lender’s own promotional and marketing activities, and describing the Loans in general terms or in detail and Administrative Agent’s or such Lender’s participation in the Loans. All references to Administrative Agent or any Lender contained in any press release, advertisement or promotional material issued by Borrower shall be approved in writing by Administrative Agent and such Lender in advance of issuance.

Section 12.17 Survival.

All of the representations, warranties, covenants, and indemnities of Borrower hereunder (including environmental matters under Article 5 of the Project Loan Agreement, the obligations under Sections 2.7(1), 2.7(5) and 2.7(6) of the Project Loan Agreement), and under the indemnification provisions of the other Loan Documents shall survive (a) the repayment in full of the Loans and the release of the Liens evidencing or securing the Loans, (b) the transfer (by sale, foreclosure, conveyance in lieu of foreclosure or otherwise) of any or all right, title and interest in and to the Project to any party, whether or not an Affiliate of Borrower and (c) in the case of any Lender that may assign any interest in its Commitment or Loans hereunder in accordance with the terms of this Agreement, the making of such assignment, notwithstanding that such assigning Lender may cease to be a "Lender" hereunder.

Section 12.18 WAIVER OF JURY TRIAL.

BORROWER, ADMINISTRATIVE AGENT AND EACH LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOANS OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR ADMINISTRATIVE AGENT AND EACH LENDER TO ENTER THIS AGREEMENT.

Section 12.19 Remedies of Borrower.

It is expressly understood and agreed that, notwithstanding any Applicable Law or any provision of this Agreement or the other Loan Documents to the contrary, the liability of Administrative Agent and each Lender (including their respective successors and assigns) and any recourse of Borrower against Administrative Agent and each Lender shall be limited solely and exclusively to their respective interests in the Loans and/or Commitments or the Project. Without limiting the foregoing, in the event that a claim or adjudication is made that Administrative Agent, any of the Lenders, or their agents, acted unreasonably or unreasonably delayed acting in any case where by Applicable Law or under this Agreement or the other Loan Documents, Administrative Agent, any Lender or any such agent, as the case may be, has an obligation to act reasonably or promptly, or otherwise violated this Agreement or the Loan Documents, Borrower agrees that none of Administrative Agent, the Lenders or their agents shall be liable for any incidental, indirect, special, punitive, consequential or speculative damages or losses resulting from

such failure to act reasonably or promptly in accordance with this Agreement or the other Loan Documents.

Section 12.20 Governing Law.

This Agreement, the notes and the other Loan Documents shall be governed by, and construed in accordance with the law of the State of New York, except to the extent otherwise specified in any of the Loan Documents. The provisions of Section 12.20 of the Project Loan Agreement with respect to submission to jurisdiction are hereby incorporated by reference and shall be applicable to this Agreement.

Section 12.21 Entire Agreement.

This Agreement and the other Loan Documents embody the entire agreement and understanding between Administrative Agent, the Lenders and Borrower and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. If any conflict or inconsistency exists between the Commitment Letter and this Agreement or any of the other Loan Documents, the terms of this Agreement shall control.

Section 12.22 Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Section 12.23 Assignments and Participations by the Lenders.

Each Lender may only assign any of its Loans, its Notes and its Commitment and sell interests in the Loans to Participants in accordance with Section 12.23 of the Project Loan Agreement, which section is hereby incorporated herein by reference.

Section 12.24 Brokers.

This Agreement shall be subject to the provisions of Section 12.24 of the Project Loan Agreement, which section is hereby incorporated herein by reference.

Section 12.25 Right of Set-off.

Upon the occurrence and during the continuance of any Event of Default, each of the Lenders shall have the right of set-off as provided in Section 12.25 of the Project Loan Agreement, which section is hereby incorporated here by reference.

Section 12.26 Limitation on Liability of Administrative Agent's and the Lenders' Officers, Employees, etc.

Any obligation or liability whatsoever of Administrative Agent or any Lender which may arise at any time under this Agreement or any other Loan Document shall be satisfied, if at all, out of Administrative Agent's or such Lender's respective assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Administrative Agent's or any Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 12.27 Cooperation with Syndication.

This Agreement shall be subject to the provisions of Section 12.27 of the Project Loan Agreement with respect to usury laws, which section is hereby incorporated herein by reference.

Section 12.28 Severance of Loan.

This Agreement shall be subject to the provisions of Section 12.28 of the Project Loan Agreement with respect to usury laws, which section is hereby incorporated herein by reference.

Section 12.29 Confidentiality.

This Agreement shall be subject to the provisions of Section 12.29 of the Project Loan Agreement with respect to usury laws, which section is hereby incorporated herein by reference.

ARTICLE 13

RECOURSE LIABILITY

Section 13.1 Recourse Liability.

This Agreement shall be subject to the provisions of Article 13 of the Project Loan Agreement, which section is hereby incorporated herein by reference.

ARTICLE 14

ADMINISTRATIVE AGENT

Section 14.1 Appointment, Powers and Immunities.

The provisions of Article 14 of the Project Loan Agreement are hereby incorporated by reference, including, without limitation, Administrative Agent's powers and immunities, reliance, obligations with respect to Defaults, rights as a Lender, right to

indemnification by the Lenders, non-reliance by the Lenders, failure to act, resignation, authorization and remedies with respect to Defaulting Lenders.

ARTICLE 15
CASH MANAGEMENT

Section 15.1 Cash Management.

This Agreement shall be subject to the provisions of Article 15 of the Project Loan Agreement, which article is hereby incorporated herein by reference.

ARTICLE 16
CONTROLLED ACCOUNTS

Section 16.1 Controlled Accounts.

This Agreement shall be subject to the provisions of Article 15, which article is hereby incorporated herein by reference.

[Signature Pages Follow]

EXECUTED as of the date first written above.

BORROWER:

ACADIA-PA EAST FORDHAM
ACQUISITIONS, LLC,
a Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

Address for Notices:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue,
Suite 260
White Plains, NY 10605
Attention: Robert Masters
Telecopier No.: 914-428-3646

FORDHAM PLACE OFFICE, LLC,
a Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

Address for Notices:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue,
Suite 260
White Plains, NY 10605
Attention: Robert Masters
Telecopier No.: 914-428-3646

LENDER:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

Address for Notices to Eurohypo
AG, New York Branch:

Eurohypo AG, New York Branch
1114 Avenue of the Americas,
29th Floor
New York, New York 10036
Attention: Legal Director
Telecopier No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas,
29th Floor
New York, New York 10036
Attention: Head of Portfolio
Operations
Telecopier No.: 866 267 7680

— and —

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

ADMINISTRATIVE AGENT:

EUROHYPO AG, NEW YORK BRANCH,
as Administrative Agent

By: _____

Name:

Title:

By: _____

Name:

Title:

Address for Notices to Eurohypo
AG, New York Branch:

Eurohypo AG, New York Branch
1114 Avenue of the Americas,
29th Floor
New York, New York 10036
Attention: Legal Director
Telecopier No.: 866 267 7680

With copies to:

Eurohypo AG, New York Branch
1114 Avenue of the Americas,
29th Floor
New York, New York 10036
Attention: Head of Portfolio
Operations
Telecopier No.: 866 267 7680

— and —

Riemer & Braunstein LLP
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Attention: Steven J. Weinstein, Esq.
Telecopier No.: (617) 692-3503

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the ____ day of _____ in the year 2007, before me, the undersigned, a notary public in and for said state, personally appeared Robert Masters, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My commission expires:

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the _____ day of _____ in the year 2007, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My commission expires:

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the _____ day of _____ in the year 2007, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My commission expires:

BUILDING LOAN COMMITMENTS

	Lender	Commitment
Eurohypo AG, New York Branch		\$75,339,243.00
		\$
Total		\$75,339,243.00

PLANS AND SPECIFICATIONS

General Description

- Base building construction drawings by Greenberg Farrow dated August 1, 2007 as follows:
 - Site
 - Architectural
 - Structural
 - Mechanical
 - Electrical
 - Plumbing
 - Fire Protection
- Base Building specifications by Greenberg Farrow as follows:
 - Divisions 100 through 12000 dated January 5, 2007
 - Division 14000 dated January 19, 2007
 - Division 15000 dated April 16, 2007
 - Division 16000 dated December 29, 2006
- Sears tenant construction drawings dated August 22, 2007
- Sears tenant specifications dated August 1, 2007

Detailed Description

See Attached

PROJECT DOCUMENTS

1. Plans and Specifications
 2. The Borrower's Architect's Agreement
 3. Construction Management Agreement
 4. Engineering Agreements.
 5. Major Contracts.
 6. Minor Contracts.
 7. Government Approvals.
 8. Construction Schedule.
 9. Consents and Acknowledgements from Construction Manager, Architect, Engineer and Major Contractors.
 10. Design Professionals' Certificates.
 11. ALTA Survey.
 12. Site Plan.
-

ADVANCE CONDITIONS

Part A — Initial Advance

Part B — General Conditions

Part C — Conditions to Final Loans

PART A. CONDITIONS PRECEDENT TO EFFECTIVENESS OF BUILDING LOAN COMMITMENTS AND TO INITIAL BUILDING LOANS.

The effectiveness of the Building Loan Commitments and the obligation of the Lenders to make the initial Building Loans are subject Administrative Agent's receipt, review, approval and/or confirmation of the following, at Borrower's cost and expense, each in form and content satisfactory to Administrative Agent in its sole discretion (such conditions not to be duplicative to the extent they are the same matters required as conditions precedent to the effectiveness of the Acquisition Loans and Project Loans under the Project Loan Agreement):

ORGANIZATIONAL AND AUTHORIZATION DOCUMENTS; OPINIONS; OTHER DOCUMENTATION RELATING TO BORROWER, BORROWER PARTIES AND OTHER PERSONS

1. All documents evidencing the formation, organization, valid existence, good standing of and for Borrower and each Borrower Party, and the authorization, execution, delivery and performance of the Loan Documents and Project Documents by Borrower and each Borrower Party, including a certified organizational chart for Borrower and Borrower Parties.
 2. Legal opinions issued by counsel for Borrower and each Borrower Party, opining as to the due organization, valid existence and good standing of Borrower and each Borrower Party; as to the due authorization, execution, delivery, enforceability and validity of the Loan Documents with respect to Borrower and each Borrower Party (and including opinions with respect to non-contravention, perfection, choice of law, usury and non-consolidation); and as to such matters concerning the zoning and entitlements for the Project, compliance with Applicable Law (including the Affordable Housing Requirements) and such other matters as Administrative Agent and Administrative Agent's counsel reasonably may specify.
 3. Current Uniform Commercial Code searches, and litigation, bankruptcy and judgment reports, as requested by Administrative Agent, with respect to Borrower and Borrower Parties.
 4. Copies of the most recent financial statements of Borrower certified by an officer of the Borrower and each Borrower Party, if applicable, and copies of the most recent audited annual financial statement of Guarantor, and certificates dated the Closing Date and signed by an Authorized Officer of Borrower and each Borrower Party stating that (i) such financial statements are true, complete and correct and (ii) no change shall have occurred in the financial condition of Borrower or any Borrower Party which would have a Material Adverse Effect on the Project, or on Borrower's or any Borrower Party's ability to repay the Loans or otherwise perform its obligations under the Loan Documents. Further, there shall not exist any material default by Borrower or any Borrower Party under any loan, financing or similar arrangement with any lender.
 5. Satisfactory financial review and background checks (including such background checks as deemed necessary by Administrative Agent and Lenders to comply with the Patriot Act) of Borrower and Borrower Parties.
 6. Opening balance sheet for Borrower.
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LOAN DOCUMENTS; CLOSING CERTIFICATES; APPRAISAL

7. The Loan Documents, executed by Borrower and, as applicable, each Borrower Party.

8. A certificate of an Authorized Officer of Borrower, dated as of the Closing Date, certifying that: (i) the representations and warranties of Borrower and each Borrower Party contained in the Loan Documents are true and correct in all material respects on and as of such date as if made on and as of such date (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such date), and (ii) no Potential Default or Event of Default has occurred and is continuing on such date.

9. An Appraisal, such that the aggregate amount of the Commitments shall not exceed seventy percent (70%) of the aggregate value of the Project. The Appraisal shall run in favor of "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon."

TITLE; SURVEY

10. An ALTA policy or policies of title insurance satisfactory to Administrative Agent (collectively, the "**Building Loan Title Policy**"), issued by the Title Insurer together with evidence of the payment of all premiums due thereon, (a) insuring Administrative Agent for the benefit of the Lenders, in an amount equal to the aggregate amount of the Building Loan Commitments, that Borrower is lawfully seized and possessed of a valid and subsisting fee simple interest in the Land and Improvements and that the Building Loan Mortgage constitutes a valid fee simple mortgage on the Land and Improvements subject to no Liens other than the Permitted Encumbrances applicable thereto and (b) providing (i) affirmative insurance or endorsements for coverage against all mechanics' and materialmen's liens, (ii) a pending disbursements clause, and (iii) such other affirmative insurance, endorsements and reinsurance as Administrative Agent may require. The form of the Building Loan Title Policy and all endorsements thereto shall be approved by Administrative Agent in its sole discretion. The Building Loan Title Policy shall name as the insured "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon".

11. A survey of the Project (the "**Survey**") in form and content, and prepared by a registered land surveyor, satisfactory to Administrative Agent. The Survey shall be certified to "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon" in accordance with a surveyor's certificate in form and substance satisfactory to Administrative Agent.

12. Evidence that all of the land parcels required to develop the Project per the final Plans and Specifications are owned by Borrower and are encumbered by the Building Loan Mortgage and insured by the Building Loan Title Policy.

INSURANCE

13. A certified copy of, or certificates of insurance with respect to, the insurance policies required under Section 3.1(1) of this Agreement (inclusive of the insurance policies required under Schedule 3.1(1)(J)), together with evidence of the payment of all premiums therefor.

GOVERNMENT APPROVALS; COMPLIANCE WITH LAW

14. Originals (or copies certified by an Authorized Officer of Borrower to be true copies) of all Government Approvals referred to in the Permitting Schedule, other than those expressly provided for in said Schedule to be obtained at a later time (together with, if requested by Administrative Agent, an opportunity to review (or certified copies of) all correspondence referred to in such Government Approvals and all applications for such Government Approvals).

15. Evidence satisfactory to Administrative Agent of final approval from Borrower's Architect and the New York City Department of Buildings of Project design and specifications.

16. Evidence satisfactory to Administrative Agent that the Land is and, upon completion thereof, the Improvements will be in compliance with all Applicable Law and any applicable covenants, conditions and restrictions affecting the Land.

17. Receipt, review and acceptance by the administrative Agent of (i) a Phase I report and Phase II report, if applicable, for the Project.

PROJECT DOCUMENTS; CONSENTS AND AGREEMENTS; GOVERNMENT APPROVALS

19. True and correct copies of each of the Project Documents (including all amendments thereto), certified as such by an Authorized Officer of Borrower, together with evidence that (a) each of the Project Documents has been duly executed and delivered by each Person that is a party thereto and is in full force and effect; (b) neither Borrower nor, to the best of Borrower's knowledge, any other Person which is party to any of the Project Documents, is in default thereunder beyond any applicable cure and notice periods; (c) no term or condition thereof shall have been amended, modified or waived without the prior consent of Administrative Agent. The form and substance of each of the Project Documents shall be satisfactory to Administrative Agent.

20. A true and correct copy of the Construction Management Agreement certified as such by an Authorized Officer of Borrower and evidence that no term or condition of such contract shall have been modified and/or waived without the prior consent of Administrative Agent, together with financial statements for the Construction Manager. The form and substance of the Construction Management Agreement, and the financial statements of the Construction Manager, shall be satisfactory to Administrative Agent.

21. A certificate of the Construction Manager in favor of Administrative Agent (on behalf of the Lenders) certifying that the Construction Schedule and the Budget (as it relates to

Hard Costs) are realistic and can be adhered to in completing the Construction Work for the Improvements in accordance with the Plans and Specifications.

22. A true and correct copy of Borrower's Architect Agreement certified as such by an Authorized Officer of Borrower and evidence that no term or condition of Borrower's Architect Agreement shall have been modified, amended, supplemented and/or waived without the prior consent of Administrative Agent. The form and substance of Borrower's Architect Agreement shall be satisfactory to Administrative Agent.

23. A schedule of the identity of the Major Contractors for the Improvements representing at least eighty percent (80%) of the cost of the completion of the Project Completion Work for the Improvements (including the Major Contracts for the mechanical, electrical and plumbing work and any other Major Contractors deemed reasonably appropriate by Administrative Agent), and copies of the executed Major Contracts entered into with such Major Contractors and all modifications, amendments and/or supplements thereto with respect thereto, together with a certificate of an Authorized Officer of Borrower certifying that (A) the copies of the Major Contracts attached to such certificate are true, correct and complete in all respects; (B) such Major Contracts attached to such certificate are in full force and effect; and (C) neither Borrower, nor the Construction Manager nor the applicable Major Contractor is in default thereunder. The form and substance of the Major Contract shall be satisfactory to Administrative Agent.

24. Evidence satisfactory to the Administrative Agent that the Project is eligible to obtain and receive a partial exemption of real property taxes for the Improvements for a twenty-five (25) year period under the Industrial and Commercial Incentive Program, as of right.

25. If any Construction Work has been commenced prior to the Closing Date, (a) the most recent Construction Manager's progress payment request showing the percentage of completion, the amount funded and Change Order status and (b) sworn partial waivers of liens covering all work and materials performed or supplied prior to the Closing Date from all contractors, subcontractors, materialmen, suppliers and other vendors.

26. Certificates of Borrower's applicable Design Professionals (such certificates to be limited to the portion of the Construction Work for which the respective Design Professional is responsible) in favor of Administrative Agent (on behalf of the Lenders), or other evidence satisfactory to Administrative Agent, that (a) the Plans and Specifications for the Improvements are in full compliance with all Applicable Law; (b) the Plans and Specifications for the Improvements are full and complete in all respects and contain all details necessary for construction of the Project Completion Work for the Improvements; (c) all Government Approvals to the extent necessary for construction of the Project Completion Work for the Improvements have been issued; (d) the gross square footage of the Improvements as shown on a schedule attached to the certificate of the applicable Design Professional accurately reflects the gross square footage of the improvements contemplated by the Plans and Specifications for the Improvements; (e) there exist with respect to the Project adequate water, storm and sanitary sewage facilities and other required public utilities, together with a means of ingress and egress to and from the Project over public streets; and (f) the Construction Schedule and the Budget for

the Improvements are realistic and can be adhered to in completing the Project Completion Work for the Improvements in accordance with the Plans and Specifications therefor.

PLANS AND SPECIFICATIONS; BUDGET; CONSTRUCTION SCHEDULE; REPORTS AND STUDIES

27. Receipt, review, and approval by Administrative Agent and the Construction Consultant of the final Plans and Specifications for the Improvements, including any Construction, architectural and engineering drawings, sealed by the applicable Design Professionals.

28. The delivery by the Construction Consultant to Administrative Agent of the Construction, Cost and Plan Review in form and substance satisfactory to Administrative Agent.

29. The Budget as approved by Administrative Agent, which shall include all Project Costs for the Improvements and shall be sufficient to complete the Improvements and carry the Project through the Maturity Date based on the final Plans and Specifications. The Budget shall be such that the aggregate amount of the Commitments shall not exceed eighty percent (80%) of the aggregate Project Costs for the entire Project reflected on the Budget. To the extent that the Commitments would exceed any of the limits described in this section, they shall be automatically reduced to an amount not in excess of the limits described in this section.

30. The Construction Schedule, together with (if any Construction Work has been commenced prior to the Closing Date) evidence satisfactory to Administrative Agent that the development of the Construction Work is proceeding in accordance with the Construction Schedule and the Budget.

31. Receipt, review, and acceptance by Administrative Agent of (i) Site Assessments relating Project; (ii) seismic studies showing a probable maximum loss of less than 20% for the Project; and (iii) soils reports, engineering reports, geotechnical reports and other reports and studies in each case as required by Administrative Agent and prepared in accordance with Administrative Agent's scope and by consultants engaged by Administrative Agent or, if consented to by Administrative Agent, engaged by Borrower with reliance rights with respect to such reports and studies expressly granted in writing to Administrative Agent and its on behalf of the Lenders and the respective successors and assigns of each of the foregoing. All such reports and studies shall be in a form approved by Administrative Agent, and shall be certified to Administrative Agent (on behalf of the Lenders and their successors and assigns) in a form reasonably requested by Administrative Agent which may include certification to additional participants, co-lenders and/or investors. Such reports and studies shall run in favor of "Eurohypo AG, New York Branch or its designee, as Administrative Agent on behalf of the lenders in its lending syndicate from time to time, and the successors and assigns of each of the foregoing, all of whom may rely thereon".

PAYMENT OF INITIAL EQUITY CONTRIBUTION, FEES, EXPENSES AND COSTS

32. There shall have been made by Borrower unreimbursed equity contributions to the Project in an aggregate amount equal to the Initial Equity Contribution, and Borrower shall have delivered to Administrative Agent evidence satisfactory to it that Borrower has made such

contributions, including, without limitation, a certificate of an Authorized Officer of Borrower certifying thereto and itemizing the uses of the such contributions, such certificate to be accompanied by backup materials documenting the amount of such contributions and the use of same; provided, however, the Administrative may, in its sole discretion, waive this requirement for the closing of the Loan, as long as such requirement is satisfied prior or contemporaneously with the initial advance of proceeds of the Loan.

33. Payment to Administrative Agent in accordance with the Fee Letters of the upfront fee and arrangement fee described therein, together with the initial annual payment of the Agency Fee and the final payment of the Unused Commitment Fee for the Commitments in accordance with Section 2.71(1) of this Agreement.

34. Payment of all fees and commissions payable to real estate brokers, mortgage brokers, or any other brokers or agents in connection with the Loans, such evidence to be accompanied by any waivers or indemnifications deemed necessary by Administrative Agent.

35. Payment of Administrative Agent's costs and expenses in underwriting, documenting, and closing the transaction, including fees and expenses of Administrative Agent's inspecting engineers, consultants, and outside counsel.

36. Payment of all expenses and premiums in connection with the issuance of the Building Loan Title Policy and all recording charges, mortgage taxes and filing fees payable in connection with recording the Building Loan Mortgage and the filing of the Uniform Commercial Code financing statements related thereto in the appropriate offices.

37. Payment of any due and payable real estate taxes and assessments with respect to the Project remaining unpaid on the Closing Date.

LEASES:

38. Receipt, review, and acceptance by Administrative Agent of (i) the leases with Existing Tenants, and (ii) for each of the leases with Existing Tenants, (1) written estoppels in form and substance reasonably satisfactory to Administrative Agent, executed by tenants under the leases with Existing Tenants and confirming the term, rent, and other provisions and matters relating to the leases and (2) written subordination and attornment agreements, in form and substance satisfactory to Administrative Agent, executed by Existing Tenants, whereby, among other things, such tenants subordinate their interest in the Project to the Loan Documents and agree to attorn to Administrative Agent (on behalf of the Lenders) and its successors and assigns upon foreclosure or other transfer of the Project after an Event of Default.

39. Evidence satisfactory to Administrative Agent that, as of the Closing Date, the aggregate fixed minimum rent of the retail leases shall be no less than \$5,150,000.

OTHER

40. Such other documents or items as Administrative Agent or its counsel reasonably may require, including, without limitation the delivery of such documents or items as may be indicated on a closing checklist distributed to Borrower by Administrative Agent or its counsel.

41. No material change shall have occurred in the financial markets which would have, in Administrative Agent's judgment, a material adverse affect on the Project or any obligor's ability to repay the Loans or otherwise perform its obligations under the Loan Documents.

42. Evidence that the other conditions set forth in Article 4 have been satisfied.

43. Evidence that all of the conditions precedent to the effectiveness of the initial Acquisition Loans and Project Loans under the Project Loan Agreement shall have been satisfied.

44. Notwithstanding anything to the contrary contained herein, in no event shall the initial disbursement of the Loans occur prior to the Closing Date.

PART B. GENERAL CONDITIONS TO ALL BUILDING LOANS

The obligation of the Lenders to make any Loans shall be subject to Administrative Agent's receipt, review, approval and/or confirmation of the following, each in form and content satisfactory to Administrative Agent in its sole discretion (such conditions not to be duplicative to the extent they are the same matters required as conditions precedent to the effectiveness of the Acquisition Loans and/or Project Loans that are being advanced concurrently therewith under the Project Loan Agreement):

1. There shall exist no Potential Default or Event of Default (both before and after giving effect to the requested advance).
 2. The representations and warranties contained in this Agreement and in all other Loan Documents shall be true and correct in all material respects on and as of the date of the making of such Loan with the same force and effect as if made on and as of such date.
 3. Such advance shall be secured by the Building Loan Mortgage and the other Security Documents, subject only to the Permitted Encumbrances, as evidenced by a Date Down Endorsement satisfactory to Administrative Agent.
 4. Borrower shall have paid Administrative Agent's costs and expenses in connection with such advance (including title charges and attorneys' fees and expenses).
 5. No change shall have occurred in the financial condition of Borrower or any Borrower Party or in the Project which would have a Material Adverse Effect.
 6. No proceeding with respect to condemnation, adverse possession, zoning change or usage change proceeding shall have occurred or shall have been threatened against the Project the Project shall not have suffered any damage by fire or other casualty which has not been repaired or is not being restored in accordance with this Agreement; no Applicable Law or injunctive proceeding, restriction, litigation, action, citation or similar proceeding or matter shall have been enacted, adopted, or threatened by any Governmental Authority, which would have, in Administrative Agent's judgment, a material adverse effect on the Project or Borrower's or any Borrower Party's ability to perform its obligations under the Loan Documents.
 7. The Construction Work (or such part thereof as may have been constructed at the time of any borrowing) shall have been constructed substantially in accordance with the Plans and Specifications and the Construction Schedule (as each may have been modified in accordance with this Agreement) and all applicable Government Approvals; and there shall exist no Unsatisfactory Work.
 8. The Construction Consultant shall have reviewed and approved the disbursement requested in the Request for Loan Advance delivered by Lead Borrower with respect to such Loan. Such Request for Loan Advance shall include copies of all documents, contracts, invoices, bills, construction records, lien waivers, Change Orders, and drawings, plans and specifications as the Construction Consultant shall reasonably require, to enable the Construction Consultant to timely review each Request for Loan Advance.
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9. Borrower shall have provided the Construction Consultant, Administrative Agent and the Lenders, or their representatives, prompt and reasonable access to the Project, in order to inspect the Construction Work then completed.

10. Administrative Agent shall have received the following items in connection with each Loan:

(a) A Request for Loan Advance as provided in Section 2.1(2) and Sections 2.6(4) and 4.2 of the Project Loan Agreement duly executed by an Authorized Officer of Lead Borrower, together with the required attachments thereto;

(b) Such invoices, contracts and other supporting data as Administrative Agent may reasonably require to evidence that all Project Costs for which disbursement of Building Loans is sought have been incurred and are then due and payable;

(c) Except for Liens insured against pursuant to the Building Loan Title Policy, (i) sworn unconditional waivers of lien from contractors, subcontractors, materialmen, suppliers and vendors, covering all work for which funds have been advanced pursuant to a prior disbursement and (ii) at Administrative Agent's election, sworn conditional waivers of lien from contractors, subcontractors, materialmen, suppliers and vendors, covering all work of such Persons for which funds are being advanced pursuant to the then current Request for Loan Advance, all in compliance with the Lien Law;

(d) Copies of any Change Orders which have not been previously furnished to Administrative Agent and the Construction Consultant, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(e) Copies of all Contracts and purchase orders which have been executed or modified, amended and/or supplemented since the last Loan, together with (i) a certificate by an Authorized Officer of Lead Borrower certifying that the delivered items are true, accurate and complete copies of the originals thereof, and (ii) Consents and Agreements in the applicable form attached to the General Assignment from each Major Contractor who has entered into a Major Contract but has not previously delivered a Consent and Agreement;

(f) Inventory of materials and equipment stored on the Project and evidence that Borrower has complied with all of the requirements of Section 4.8 relating to such stored materials;

(g) Copies of all Government Approvals (to the extent required as of such date) not previously delivered to Administrative Agent, certified by an Authorized Officer of Borrower;

(h) If any material dispute arises between or among Borrower, the Construction Manager or any Major Contractor, a written summary of the nature of such dispute;

(i) If the Budget shall have been modified, copies of all such modifications, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(j) Copies of all amendments to the Construction Schedule not previously delivered to Administrative Agent, all of which shall be subject to Administrative Agent's review and approval in accordance with this Agreement;

(k) Promptly after the completion of the construction of the foundation or other support elements for the Construction Work, Lead Borrower shall provide to Administrative Agent a current survey of the Land showing all improvements located thereon and complying with the requirements set forth in Part A, paragraph 11 and shall obtain a foundation endorsement to the Building Loan Title Policy in form satisfactory to Administrative Agent insuring that all foundations and other support elements are located within applicable property and setback lines and do not encroach upon any easements or rights of way; and

(l) To the extent not previously delivered to Administrative Agent, evidence showing compliance with the insurance provisions of Section 3.1.

11. All of the conditions set forth in Part A above shall remain satisfied and all applicable conditions in Article 4 shall have been satisfied, including the application of all Operating Revenues in accordance with Section 4.6.

12. Evidence that all of the conditions precedent to the effectiveness of a Project Loan under the Project Loan Agreement shall have been satisfied; provided, however, Items 3, 10(a) and 10(b) of Schedule 4 — Part B of the Project Loan Agreement need not be satisfied if no Project Loan is being advanced at such time.

13. The Loans shall be In Balance, and all material actions required to have been undertaken or obtained prior to the date of such disbursement pursuant to the Permitting Schedule and the Marketing Plan and Schedule shall have been undertaken or obtained as applicable.

14. Operating Revenues shall have been applied in accordance with Section 4.1(1) and Section 4.6(1) of the Project Loan Agreement.

15. To the extent not previously delivered to Administrative Agent, Lead Borrower shall provide evidence of the payment of all costs, expenses and other charges covered by previous Requests for Loan Advances for which advances of Loans have previously been made.

16. Administrative Agent has reasonably determined withholding such disbursement in whole or in part is not required by the Lien Law.

17. Such other documents and items as Administrative Agent may reasonably request.

PART C. CONDITIONS TO THE FINAL BUILDING LOANS FOR PROJECT COMPLETION WORK

The obligation of the Lenders to make the final Building Loans to Borrower for Project Completion Work with respect to the Improvements is subject to the further condition precedent that all of the following requirements (collectively, the **“Project Work Substantial Completion Conditions”**) shall have been completed to the reasonable satisfaction of Administrative Agent:

1. Administrative Agent and the Construction Consultant (except in the case of clauses (b) and (h) below) shall have received the following items in connection with the final Loans for such Project Completion Work:

(a) Evidence of the approval by the applicable Governmental Authorities of such Project Completion Work to the extent any such approval is a condition of the lawful use of such Project Completion Work, including, without limitation, valid certificates of occupancy;

(b) A final as-built survey covering such Project Completion Work and any paving, driveways and exterior improvements and otherwise in compliance with Schedule 4 — Part A, paragraph 11, together with endorsements to the Title Policies which are satisfactory to Administrative Agent and which describe the Improvements located on the Project (CLTA 116 series), insure the lien-free completion of the Improvements (CLTA 101 series, as required by Administrative Agent), insure that there are no encroachments or violations of any recorded covenants, conditions or restrictions affecting the Project (CLTA 100 series), and amend any survey exception to reflect the final as-built survey;

(c) A full and complete certified set of “as built” Plans and Specifications for such Work;

(d) Unconditional waivers of lien and sworn statements from all contractors, subcontractors, materialmen, suppliers and vendors with respect to such Project Completion Work, in each case in compliance with the Lien Law;

(e) Certificates from the applicable Design Professionals (such certificates, except in the case of Borrower’s Architect, to be limited to the portion of such Project Completion Work for which the respective Design Professional was responsible) stating that, to the best of such Design Professional’s knowledge, (i) such Project Completion Work (A) has been substantially completed in accordance with the Plans and Specifications, (B) is structurally sound (the certification as to structural soundness to be made by the structural engineer only) and (C) is available for occupancy, delivery to an applicable tenant for performance of tenant work (subject to completion of Punch List Items), and (ii) such Project Completion Work as so completed complies with all applicable building codes;

(f) Statement from the testing engineer performing construction materials testing indicating that such Project Completion Work was performed according to the Plans and Specifications;

(g) Violation searches, if available and reasonably requested by Administrative Agent, with Governmental Authorities indicating no notices of violation have been issued with respect to such Project Completion Work;

(h) Current searches of all Uniform Commercial Code financing statements filed with the Secretary of State of the state of formation/organization of Borrower and the office of the Recorder of Bronx County, New York, showing that no Uniform Commercial Code financing statements are filed or recorded against Borrower in which the collateral is personal property or fixtures located on the Project or used in connection with the Project other than financing statements with respect to the Loans;

(i) A certificate of an Authorized Officer of Borrower certifying that:

(i) no condemnation of any portion of the Project or any action which could result in a relocation of any roadways abutting the Project or the denial of access, which, in Administrative Agent's sole judgment, adversely affects the Lenders' security or the operation of the Project, has commenced or, to the best of Borrower's knowledge, is contemplated by any Governmental Authority;

(ii) all fixtures, attachments and equipment necessary for the operation of the Project Completion Work have been installed or incorporated into the Project and are operational and in good working order, free from defects; all guarantees and warranties have been transferred/assigned to Borrower; and Borrower is the absolute owner of all of said property free and clear of all Liens; and

(iii) all Project Costs relating to such Project Completion Work have been paid in full except (A) to the extent covered by the final Loans then being requested, and (B) amounts for Hard Costs which Borrower is disputing in good faith and with due diligence; provided that Administrative Agent may, in its sole discretion, hold back an amount equal to (x) 150% of the disputed amount minus (y) any Retainage that Administrative Agent is still holding with respect to the applicable Hard Costs, and (C) amounts held by Administrative Agent with respect to Punch List Items with respect to the applicable Hard Costs.

(j) Evidence that all of the Government Authorizations required to be obtained by such time in accordance with the Permitting Schedule have been obtained.

(k) All on-site and off-site work has been completed.

2. At Borrower's expense, an engineering report from a licensed professional engineer, satisfactory in form and content to Administrative Agent, which shall (a) comment on the structural soundness of the Project, seismic resistance, quality and remaining economic life of the roof, HVAC and improvements and (b) verify that the Project Completion Work has been completed in accordance with the Plans and Specifications, approved by the appropriate Governmental Authorities and that the Project, and the Improvements constructed thereon, satisfy all Applicable Law.

3. Administrative Agent shall have received written certification from the Construction Consultant that (a) such Project Completion Work has been substantially completed in accordance with the Plans and Specifications, subject to completion of Punch List Items (as to which, if incomplete on the date of the final disbursement of a Loan for Work, Administrative Agent may, in its sole discretion, hold back an amount equal to (a) 150% of the estimated cost of completing such Punch List Items from the final disbursement minus (b) any Retainage that Administrative Agent is still holding with respect to the applicable Punch List Items, such amount to be advanced to Lead Borrower on completion of such Punch List Items and the satisfaction of the requirements of Section 4.2 with respect to Retainage, which Borrower shall diligently complete) and (b) the deliveries required in paragraphs 1 and 2 above shall have been received and approved by Administrative Agent.

TENANT IMPROVEMENT WORK

Best Buy — Turn Key

- *Full buildout according to tenants plans.*

Sears — Turn Key

- *Full buildout according to tenants plans.*

24-Hour — Cold Dark Shell

- *Provide demising walls and all utilities not stubbed to the space. Utilities are on each floor and tenant will connect themselves. We tell them where utilities are located.*

Walgreen's — Cold Dark Shell

- *Provide demising walls and all utilities not stubbed to the space. Utilities are on each floor and tenant will connect themselves. We tell them where utilities are located*

Office — White Box + TI TBD

- *Perimeter walls are sheet rocked and ready for finish. Floors are ready for finish. Ceilings and Sprinklers are in place. Basic power in demising partitions. Electric lighting in place.*
-

LEGAL DESCRIPTION OF PROJECT

PARCEL I — (f/k/a LOT 8, Now Part of LOT 9)

ALL THAT CERTAIN piece or parcel of land, together with any improvements thereon situate, lying and being in the Borough of the Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly side of Webster Avenue (100 feet in width), said point being distant south 08 degrees 26 minutes 11 seconds west, a distance of 254.35 feet from a point formed by the intersection of said easterly side of Webster Avenue with the southerly side of East Fordham Road (a/k/a Pelham Avenue variable in width) and from said point of beginning

RUNNING THENCE along the common dividing line between said Lot 8 and Lot 9 south 85 degrees 39 minutes 56 seconds east, a distance of 108.97 feet to a point;

THENCE along the common dividing line between said Lot 8 and Lot 12 south 04 degrees 33 minutes 31 seconds west, a distance of 24.68 feet to a point;

THENCE along the common dividing line between said Lots 8 and Lot 4 (lands now or formerly of Automotive Realty Corporation) north 85 degrees 39 minutes 56 seconds west, a distance of 110.65 feet to a point; on the aforementioned easterly side of Webster Avenue;

THENCE along the easterly side of said Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 24.74 feet to the point or place of BEGINNING.

PARCEL II — LOT 9:

ALL THAT CERTAIN piece or parcel of land, together with any improvements thereon situate, lying and being in the Borough of the Bronx, City and State of New York, and as further bounded and described as follows:

BEGINNING at a point on the easterly side of Webster Avenue (100 feet wide), said point being distant south 08 degrees 26 minutes 11 seconds west, a distance of 228.81 feet from a point formed by the intersection of said easterly side of Webster Avenue with the southerly side of East Fordham Road (a/k/a Pelham Avenue, variable width) and from said point of beginning;

RUNNING THENCE the following two (2) courses along the dividing line between Lot 9 (n/f reputed owner Acadia-PA East Fordham Acquisitions, LLC and Lot 12 (n/f reputed owner Acadia-PA East Fordham Acquisitions, LLC), Block 3033;

1. South 85 degrees 39 minutes 56 seconds east, a distance of 115.24 feet to a point; thence
 2. South 03 degrees 58 minutes 56 seconds west, a distance of 25.48 feet to a point; thence
-

3. Along the common dividing line between the aforementioned Lot 9 and Lots 12 & 8 (n/f Acadia-PA East Fordham Acquisitions LLC), Block 3033 north 85 degrees 39 minutes 56 seconds west, a distance of 117.22 feet to a point on the aforementioned easterly side of Webster Avenue; thence

4. Along said easterly side of Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 25.54 feet to the point or place of BEGINNING.

This description is prepared in accordance with a Survey made by Control Point Associates Inc. dated 8/30/07 and last revised 9/18/07 by Gregory A. Gallas NY P.L.S. (Control Point Associates Inc.)

PARCEL III — LOT 12:

ALL THAT CERTAIN plot, piece or parcel of land, together with any improvements thereon situate, situate, lying and being in the Borough and County of Bronx, City and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the easterly side of Webster Avenue (100 feet wide) with the southerly side of East Fordham Road (A.K.A. Pelham Avenue, Variable Width) and from said point of beginning,

RUNNING THENCE the following three (3) courses along said southerly side of East Fordham Road;

1. South 84 degrees 34 minutes 46 seconds east, a distance of 43.27 feet to a point, THENCE

2. South 54 degrees 01 minute 22 seconds east, a distance of 29.77 feet to a point; THENCE;

3. South 40 degrees 09 minutes 32 seconds east, a distance of 85.32 feet to a point on the westerly side of Park Avenue (Variable Width) THENCE

4. Along said westerly side of Park Avenue, south 00 degrees 10 minutes 48 seconds east, a distance of 201.71 feet to a point THENCE

5. Along the dividing line between Lot 12 (Lands now or formerly of Acadia-PA East Fordham Acquisitions LLC) and Lot 4 (Lands now or formerly of Automotive Realty Corporation), Block 3033, North 85 degrees 39 minutes 56 seconds west, a distance of 53.59 feet to a point, THENCE

6. Along the common dividing line between the aforementioned Lot 12, Lot 8 (Land now or formerly of Acadia-PA East Fordham Acquisitions LLC) and Lot 9 (lands now or formerly of Acadia-PA East Fordham Acquisitions LLC) Block 3033, North 04 degrees 33 minutes 31 seconds east, a distance of 24.68 feet to a point, THENCE, The following three (3) courses along the dividing line between the aforementioned Lots 12 and 9;

7. South 85 degrees 39 minutes 56 seconds east, a distance of 8.25 feet to a point, THENCE
 8. North 03 degrees 58 minutes 56 seconds east, a distance of 25.48 feet to a point, THENCE
 9. North 85 degrees 39 minutes 56 seconds west, a distance of 115.24 feet to a point on the aforementioned easterly side of Webster Avenue, THENCE
 10. Along said easterly side of Webster Avenue, north 08 degrees 26 minutes 11 seconds east, a distance of 228.81 feet to the point and place of BEGINNING.
-

FORM OF SECTION 22 AFFIDAVIT

N.Y. LIEN LAW AFFIDAVIT

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

The undersigned, being duly sworn, deposes and says that:

1. He resides at the address shown at the foot hereof.

2. He is the _____ of _____, the managing member of _____ (the “**Borrower**”), a _____ limited liability company, which is the Borrower mentioned in the Building Loan Agreement dated as of the date hereof, between the Borrower, Wachovia Bank, N.A. (the “**Administrative Agent**”), as Administrative Agent, and the Lenders which are party thereto (each, a “**Lender**”).

3. The aggregate amount of the Building Loans is \$_____.

[4. The amount, if any, to be advanced from the Building Loans to reimburse Borrower for costs of the Improvements expended by Borrower after the commencement of the Improvements but prior to the date hereof are itemized as follows:

<u>Description of Cost of Improvements¹</u>	<u>Amount</u>
(a) Base Building Construction	\$ _____
(b) Architecture & Engineering	\$ _____
(c) Leasing Commissions	\$ _____
(d) Insurance Premiums and Expenses	\$ _____
(e) Examination of Title	\$ _____
(f) Ground Rents and Taxes	\$ _____
Total:	\$ _____]

5. The consideration for the Building Loans to be paid out of the Building Loans are (or are estimated to be) as follows:

¹ Complete list accordingly

Prior existing mortgage to be taken by assignment and consolidated with Building Loan Mortgages: \$

Consideration (e.g., commitment fees) to be paid for the Building Loans: \$

Total: \$_____

6. The estimated amount to be advanced from the Building Loans for other indirect costs of the Improvements which may become due and payable after the date hereof and during the construction of the Improvements (including, without limitation, payment and performance bonds, leasing commissions for commercial space leases of more than 3 years, insurance premiums, architects, engineers and surveyors, ground rents, taxes, assessments and water sewer rents, examination of title and recording fees, mortgage recording taxes, fees of Administrative Agent's counsel, and interest on the Building Loan) is \$_____.

7. The net sum available to Borrower from the Building Loans to pay contractors, subcontractors, laborers and materialmen for the Improvements is \$_____, subject to the satisfaction of conditions to the advance and disbursement of such amounts contained in the Building Loan Agreement.

8. The failure of any Lender to make any Building Loan to be made by it on the date specified therefor shall not relieve any other Lender of its obligation to make its Building Loan on such date, but neither any Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Building Loan to be made by such other Lender. If a Building Loan is not funded, the amounts referred to in this affidavit may not be advanced. The amounts payable by the Borrower at any time under the Building Loan Agreement and under the Building Loan Notes to each Lender shall be a separate and independent debt.

9. This affidavit is made pursuant to and in compliance with Section 22 of the Lien Law of the State of New York.

10. The Borrower is a limited liability company. Therefore, this statement is verified by deponent and not by the Borrower because the Borrower is a limited liability company and the deponent is an officer of _____, a _____, the managing member of the Borrower.

11. The facts stated above and any costs itemized on this statement are true, to the knowledge of the undersigned.

Name:

Sworn to before me this
____ day of _____, 200____.

Notary Public

ACADIA STRATEGIC OPPORTUNITY FUND III LLC,
A **DELAWARE LIMITED LIABILITY COMPANY**
AS BORROWER

ACADIA REALTY ACQUISITION III LLC,
A **DELAWARE LIMITED LIABILITY COMPANY**
AS MANAGING MEMBER

ACADIA REALTY LIMITED PARTNERSHIP,
A **DELAWARE LIMITED PARTNERSHIP**
AS GUARANTOR

ACADIA INVESTORS III, INC.,
A **MARYLAND CORPORATION**
AS PLEDGOR

REVOLVING CREDIT AGREEMENT

BANK OF AMERICA, N.A.
As Administrative Agent

BANC OF AMERICA SECURITIES LLC
As Sole Lead Arranger and Sole Book Manager

YC SUSI TRUST,
As Conduit Lender

BANK OF AMERICA, N.A.
As an Administrator, Alternate Lender and Managing Agent
and
The Other Conduit Lenders, Administrators,
Alternate Lenders and Managing Agents
From Time to Time Party Hereto

OCTOBER 10, 2007

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REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT (together with all amendments and modifications hereof and supplements and attachments hereto, this "**Credit Agreement**") is dated as of October 10, 2007 by and among **ACADIA STRATEGIC OPPORTUNITY FUND III LLC**, a Delaware limited liability company (the "**Borrower**"), **ACADIA REALTY ACQUISITION III LLC**, a Delaware limited liability company (the "**Managing Member**"), **ACADIA REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership (the "**Guarantor**") **ACADIA INVESTORS III, INC.**, a Maryland corporation (the "**Pledgor**"), **YC SUSI Trust**, as Conduit Lender, **BANK OF AMERICA, N.A.**, a national banking association (in its individual capacity, "**Bank of America**"), as administrative agent (together with any successor appointed pursuant to **Section 13.9** below, the "**Administrative Agent**") for the Lenders, as an Alternate Lender, as an Administrator and as a Managing Agent, and each of the other Persons from time to time party hereto as Lenders, Managing Agents and Administrators (all such terms, as hereinafter defined).

A. Borrower, Managing Member, Guarantor and Pledgor have requested that Lenders make loans and cause the issuance of letters of credit to Borrower and Qualified Borrowers (as hereinafter defined) for the principal purposes of providing working capital to the Borrower; financing the costs and other expenses to be incurred by Borrower in connection with making investments permitted under the Operating Agreement (as hereinafter defined); and financing the costs of other undertakings by Borrower permitted under the Operating Agreement; and

B. Lenders are willing to lend funds and to cause the issuance of letters of credit upon the terms and subject to the conditions set forth in this Credit Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. DEFINITIONS

1.1. **Defined Terms.** For the purposes of this Credit Agreement, unless otherwise expressly defined, the following terms shall have the respective meanings assigned to them in this **Section 1** or in the Section or recital referred to:

"**Account Assignment**" means that certain assignment of the Collateral Account substantially in the form of **Exhibit F**, dated the date hereof, executed by Borrower in favor of Administrative Agent for the benefit of the Secured Parties.

"**Adequately Capitalized**" means in compliance with the capital standards for bank holding companies as described in the Bank Holding Company Act of 1956, as amended, and regulations promulgated thereunder.

"**Administrative Agent**" is defined in the first paragraph hereof.

*Acadia Strategic Opportunity Fund III LLC
Revolving Credit Agreement*

“Administrative Agent’s Account” means the account designated from time to time by the Administrative Agent for payments by the Borrower Parties pursuant to this Credit Agreement.

“Administrative Agent’s Office” means Administrative Agent’s address set forth on **Schedule 14.7** or such other address as Administrative Agent may from time to time notify the Borrower and the Lenders in writing.

“Administrator” means: (a) with respect to YC SUSI, Bank of America or an Affiliate thereof; and (b) with respect to any other Conduit Lender, the Person designated by such Conduit Lender as its “Administrator”, which Person becomes a party to this Credit Agreement in such capacity.

“Affiliate” of any Person means any other Person that, directly or indirectly, controls or is controlled by, or is under common control with, such Person. For the purpose of this definition, “control” and the correlative meanings of the terms “controlled by” and “under common control with” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting shares or partnership interests or by contract or otherwise.

“Agent-Related Persons” means each Agent, together with its Affiliates (including, in the case of Bank of America in its capacity as the Administrative Agent, the Arranger), and the officers, directors, employees, agents and attorneys-in-fact of such Persons and their respective Affiliates.

“Agents” means, collectively, Administrative Agent, Letter of Credit Issuer, Administrators, Managing Agents, the Arranger and any successors and assigns in such capacities.

“Alternate Lender Percentage” means, with respect to any Lender Group, at any time, a fraction, expressed as a percentage, the numerator of which is the portion of the Loans funded by the Alternate Lenders of such Lender Group and the denominator of which is the aggregate Loans at such time of such Lender Group; *provided* that at all times on and after the first Assignment Date occurring on or after the Conduit Investment Termination Date for the Conduit Lender related to such Lender Group, the Alternate Lender Percentage for such Lender Group means 100%.

“Alternate Lender Pro Rata Share” means, with respect to each Alternate Lender and any Lender Group, the percentage obtained from the fraction: (a) the numerator of which is the Commitment of such Alternate Lender; and (b) the denominator of which is the aggregate Commitments of all Alternate Lenders in the related Lender Group.

“Alternate Lenders” means: (a) for the YC SUSI Lender Group, Bank of America and any assignees thereof that shall become party hereto pursuant to **Section 7** or **Section 14.12**; and (b) for any other Lender Group, the “Alternate Lenders” specified therefore who become parties hereto and any assignees thereof that shall become party hereto pursuant to **Section 7** or **Section 14.12**.

“**Alternate Rate**” means, for any Interest Period for any Portion of Loans for any Lender Group, an interest rate *per annum* as provided in the Fee Letter above the LIBOR Rate for such Interest Period; *provided, however*, that in the case of:

- (a) any Interest Period of one to (and including) 14 days;
- (b) any Interest Period which commences prior to the related Managing Agent receiving at least three (3) Business Days notice thereof; or
- (c) any Interest Period relating to a Portion of Loans which is less than \$5,000,000;

the “**Alternate Rate**” for each such Interest Period shall be an interest rate *per annum* equal to the Base Rate in effect on each day of such Interest Period. The “**Alternate Rate**” for any date on or after the occurrence of an Event of Default or the Maturity Date shall be the Default Rate.

“**Applicable Margin**” has the meaning provided in the Fee Letter.

“**Applicable Requirement**” means, for any Included Investor that is (or whose Credit Provider, if applicable, is): (a) a Bank Holding Company, Adequately Capitalized status or better and a Rating of BBB/Baa2 or higher; (b) an insurance company, a Best’s Rating of A- or higher and a Rating of BBB/Baa2 or higher; (c) an ERISA Investor, or the trustee or nominee of an ERISA Investor, in addition to the Sponsor’s Rating of BBB/Baa2 or higher, a minimum Funding Ratio for the related pension fund based on the Rating of the Sponsor of the related pension fund as follows:

<u>Sponsor Rating</u>	<u>Minimum Funding Ratio</u>
A-/A3 or higher	No minimum
BBB+/Baa1	90%
BBB/Baa2	95%

(d) a Governmental Plan Investor, or the Responsible Party with respect to such Governmental Plan Investor, in addition to the Responsible Party’s Rating of BBB/Baa2 or higher, a minimum Funding Ratio for the pension fund based on the Rating of the Responsible Party as follows:

<u>Responsible Party Rating</u>	<u>Minimum Funding Ratio</u>
A-/A3 or higher	No minimum
BBB+/Baa1	90%
BBB/Baa2	95%;

and (e) otherwise a Rated Investor, a Rating of BBB/Baa2 or higher.

The first Rating indicated in each case above is the S&P Rating and the second Rating indicated in each case above is the Moody’s Rating. In the event that the S&P and Moody’s Ratings are not equivalent, then the Applicable Requirement shall be based on the lower of the two. If any such Person has only one Rating, from either S&P or Moody’s, then that Rating shall apply.

“Application and Agreement for Letter of Credit” means an application and agreement for standby letter of credit by, between and among Borrower and a Qualified Borrower, on the one hand, and the Letter of Credit Issuer, on the other hand, in a form acceptable to the Letter of Credit Issuer (and customarily used by it in similar circumstances) and conformed to the terms of this Credit Agreement, either as originally executed or as it may from time to time be supplemented, modified, amended, renewed, or extended, *provided, however*, to the extent that the terms of such Application and Agreement are inconsistent with the terms of this Credit Agreement, the terms of this Credit Agreement shall control.

“Approved Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business, that is administered or managed by: (a) a Lender; (b) an Affiliate of a Lender; or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” is defined in the preamble to this Credit Agreement.

“Assignee” is defined in **Section 14.12(b)** hereof.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment Amount” means, with respect to an Alternate Lender at the time of any assignment pursuant to **Section 7.1** by any Conduit Lender in such Alternate Lender’s Lender Group, an amount equal to the least of: (a) such Alternate Lender’s Alternate Lender Pro Rata Share of the Obligations requested by such Conduit Lender to be assigned at such time; (b) such Alternate Lender’s unused Commitment (*minus* the sum of (i) the unrecovered principal amount of such Alternate Lender’s investments in such Obligations pursuant to the Program Support Agreement to which it is a party and (ii) such Alternate Lender’s Alternate Lender Pro Rata Share of the applicable Lender Group Percentage of the Letter of Credit Liability); and (c) in the case of an assignment on or after the Conduit Investment Termination Date for the Conduit Lender related to such Lender Group, (i) such Alternate Lender’s Alternate Lender Pro Rata Share of the applicable Conduit Lender Percentage of the Lender Group Percentage of the Borrowing Base minus (ii) such Alternate Lender’s Alternate Lender Pro Rata Share of the applicable Lender Group Percentage of the Letter of Credit Liability.

“Assignment and Assumption Agreement” means the agreement contemplated by **Section 14.12(b)** hereof, pursuant to which any Lender assigns all or any portion of its rights and obligations hereunder, which agreement shall be substantially in the form of **Exhibit M** attached hereto.

“Assignment Date” is defined in **Section 7.1(a)** hereof.

“Assignment Fee” is defined in **Schedule 14.12(b)** hereto.

“Attorney Costs” means and includes all reasonable fees and disbursements of any law firm or other external counsel and the allocated cost of internal legal services and all disbursements of internal counsel.

“**Auto-Extension Letter of Credit**” is defined in **Section 2.5(b)(iii)**.

“**Availability Period**” means the period commencing on the Closing Date and ending on the Maturity Date.

“**Available Loan Amount**” means, at any time, the lesser of (a) the Facility Amount at such time; or (b) the Borrowing Base at such time.

“**Bank Holding Company**” means a “*bank holding company*” as defined in **Section 2(a)** of the Bank Holding Company Act of 1956, as amended, or a non-bank subsidiary of such bank holding company.

“**Bank of America**” is defined in the preamble to this Credit Agreement.

“**Base Rate**” means, for any day for any Portion of Loans for any Lender Group, a fluctuating rate per annum equal to the higher of: (a) the Federal Funds Rate for such day, plus the Applicable Margin; and (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “*prime rate*”, plus the Applicable Margin. The “*prime rate*” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Best’s Rating**” means a “*Best’s Rating*” by A.M. Best Company.

“**Borrower**” is defined in the preamble to this Credit Agreement.

“**Borrower and Managing Member Security Agreement**” means that certain Security Agreement, substantially in the form of **Exhibit E**, executed and delivered by Borrower and Managing Member in favor of Administrative Agent for the benefit of Secured Parties.

“**Borrower Guaranty**” means an unconditional guaranty of payments in the form of **Exhibit N** attached hereto, enforceable against Borrower for the payment of a Qualified Borrower’s debt or obligation to Secured Parties; and “**Borrower Guaranties**” means such guaranties, collectively.

“**Borrower Parties**” means Borrower and each Qualified Borrower; and “**Borrower Party**” means any of them.

“**Borrowing**” means a disbursement made by Lenders with respect to Loans hereunder (including any reimbursement of the Letter of Credit Issuer following a draw on a Letter of Credit) and “**Borrowings**” means the plural thereof.

“**Borrowing Base**” means the sum of (a) ninety percent (90%) of the Eligible Available Contributions of the Included Investors at such time; and (b) sixty-five percent (65%) of the Eligible Available Contributions of the Designated Investors at such time.

“Borrowing Base Certificate” means the certificate setting forth the calculation of the Borrowing Base in the form of *Exhibit H*.

“Borrowing Base Deficit” means, on any date of determination, the amount (if any) by which: (a) the Principal Obligation is in excess of (b) the Borrowing Base.

“Business Day” means any day of the year except a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the State of New York or the city of Charlotte, North Carolina.

“Capital Call” means a call upon all or any of the Investors for payment of all or any portion of their Unfunded Capital Commitments pursuant to and in accordance with the terms of the Stockholders Agreement, the Partnership Agreement and/or the Operating Agreement, as applicable.

“Capital Call Notice” means any notice sent to an Investor for the purpose of making a Capital Call.

“Capital Call Notice Date” is defined in *Section 5.2(c)* hereof.

“Capital Commitment” means the commitment of each Investor to fund Capital Contributions, directly or indirectly, to a Credit Party in the amount set forth in, and pursuant to the terms of, the Stockholders Agreement, the Partnership Agreement and/or the Operating Agreement, as applicable.

“Capital Contribution” means for any Investor, any contribution of capital made to Borrower or the Pledgor, as applicable, in response to a Capital Call Notice.

“Capital Contributions Pledge Agreement” means that certain Capital Contributions Pledge Agreement, dated as of the date hereof executed and delivered by Pledgor in favor of Administrative Agent on behalf of the Secured Parties, as the same may be amended, supplemented or otherwise modified from time to time with the consent of Administrative Agent, the Letter of Credit Issuer, and the Lenders to the extent expressly required hereby, which agreement shall be substantially in the form of *Exhibit L* attached hereto.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person and the amount of such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateralize” is defined in *Section 2.5(g)(ii)* hereof.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System.

“Change in Law” means the occurrence, after the date of this Credit Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application

thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“**Closing Date**” means the date on which all of the conditions precedent set forth in **Section 8.1** hereof are satisfied or waived.

“**Code**” means the Uniform Commercial Code as adopted in the State of New York and any other state, which governs creation or perfection (and the effect thereof) of security interests in any collateral for the Obligations.

“**Collateral**” is defined in **Section 5.1(a)** hereof.

“**Collateral Account**” is defined in **Section 5.2(a)**.

“**Collateral Documents**” means the security agreements, financing statements, assignments and other documents and instruments from time to time executed and delivered pursuant to this Credit Agreement and any documents or instruments amending or supplementing the same, including, without limitation, the Borrower and Managing Member Security Agreement, the Capital Contributions Pledge Agreement and the Account Assignment.

“**Commercial Paper**” means, with respect to a Conduit Lender, the promissory notes issued or to be issued by such Conduit Lender (or its related commercial paper issuer if such Conduit Lender does not itself issue commercial paper) in the commercial paper market.

“**Commitment**” means, with respect to each Alternate Lender, as the context requires, the commitment of such Alternate Lender to make Loans (including Loans funding draws under Letters of Credit) and to pay Assignment Amounts in accordance herewith in an amount not to exceed the amount set forth opposite such Alternate Lender’s name on **Schedule 1.1** hereof and the heading “**Commitment**” (or, in the case of an Alternate Lender which becomes a party hereto pursuant to an Assignment and Assumption Agreement entered into pursuant to the terms hereof, as set forth in such Assignment and Assumption Agreement); *minus* the amount of any Commitment or portion thereof assigned by such Alternate Lender pursuant to an Assignment and Assumption Agreement entered into pursuant to the terms hereof; *plus* the amount of any increase to such Alternate Lender’s Commitment consented to by such Alternate Lender prior to the time of determination; *provided, however*, that, to the extent that the Facility Amount is reduced or otherwise declines, the aggregate of the Commitments of all the Alternate Lenders shall decline by a like amount and the Commitment of each Alternate Lender shall decline in proportion thereto.

“**Compliance Certificate**” is defined in **Section 10.1(d)**.

“**Concentration Limit**” has the meaning provided in the definition of “**Inclusion Percentage**”.

“**Conduit Assignee**” means any special purpose entity that finances its activities directly or indirectly through asset backed commercial paper and is administered by an Administrator or any of its Affiliates and designated by such Administrator from time to time to accept an

assignment from the applicable Conduit Lender of all or a portion of its Loans and other interests hereunder.

“**Conduit Collateral Agent**” means, with respect to any Conduit Lender, the “*Collateral Agent*” (if any) with respect to such Conduit Lender’s commercial paper program.

“**Conduit Investment Termination Date**” means, with respect to any Conduit Lender, the date of the delivery by such Conduit Lender to the Borrower of written notice that such Conduit Lender elects, in its sole discretion, not to make any further Loans or participate in any further Letters of Credit hereunder.

“**Conduit Lender**” means: (a) YC SUSI and any permitted Conduit Assignee thereof; and (b) any other Person that shall become a party to this Credit Agreement as a “**Conduit Lender**” pursuant to the terms hereof; and, subject to the terms and conditions of this Credit Agreement, their respective successors and assigns (but not any Participant who is not otherwise a party to this Credit Agreement).

“**Conduit Lender Percentage**” means, with respect to any Conduit Lender, at any time, 100%, less the Alternate Lender Percentage of such Conduit Lender’s Lender Group at such time.

“**Constituent Documents**” means, for any entity, its constituent or organizational documents, including: (a) in the case of a limited partnership, its certificate of registration as a limited partnership and its limited partnership agreement; (b) in the case of a limited liability company, its certificate of formation or organization and its operating agreement or limited liability company agreement; (c) in the case of a corporation, its articles or certificate of incorporation and its bylaws; and (d) in the case of a joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation with the secretary of state or other department in the state or jurisdiction of its formation, in each case as amended from time to time.

“**Controlled Group**” means: (a) the controlled group of corporations as defined in Section 1563 of the Internal Revenue Code; or (b) the group of trades or businesses under common control as defined in Section 414(c) of the Internal Revenue Code, in each case of which any Borrower Party is a part or may become a part.

“**CP Rate**” means, for any Interest Period for any Portion of Loans funded by a Conduit Lender (or its related commercial paper issuer if such Conduit Lender does not itself issue commercial paper) of a Lender Group by issuing Commercial Paper, the per annum rate equivalent to the sum of (a) the Used Fee, (b) the Dealer Fee, and (c) the weighted average cost (as determined by the applicable Administrator and including incremental carrying costs incurred with respect to Commercial Paper maturing on dates other than those on which corresponding funds are received by such Conduit Lender, other borrowings by such Conduit Lender (other than under any Program Support Agreement) and any other costs associated with the issuance of Commercial Paper) of or related to the issuance of Commercial Paper that are allocated, in whole or in part, by such Conduit Lender or the applicable Administrator to fund or maintain such

Portion of Loans (and which may be also allocated in part to the funding of other assets of such Conduit Lender); *provided, however*, that if any component of such rate is a discount rate, in calculating the “**CP Rate**” for such Portion of Loans for such Interest Period, such Conduit Lender shall for such component use the rate resulting from converting such discount rate to an interest bearing equivalent rate *per annum*.

“**Credit Agreement**” is defined in the preamble hereto.

“**Credit Parties**” means Borrower, each Qualified Borrower, Managing Member, Guarantor and Pledgor; “**Credit Party**” means any one of them.

“**Credit Party Claims**” is defined in **Section 5.4** hereof.

“**Credit Provider**” means a Person providing a guaranty, in form and substance reasonably acceptable to Administrative Agent, of the obligations of an Included Investor to make Capital Contributions to a Credit Party, or, under the applicable Investor Letter, to Administrative Agent for the benefit of the Secured Parties.

“**Current Party**” is defined in **Section 14.13**.

“**Dealer Fee**” has the meaning provided in the Fee Letter.

“**Debtor Relief Laws**” means any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, fraudulent conveyance, reorganization, or similar laws affecting the rights, remedies, or recourse of creditors generally, including without limitation the United States Bankruptcy Code and all amendments thereto, as are in effect from time to time during the term of the Loans.

“**Default Rate**” has the meaning provided in the Fee Letter.

“**Defaulting Alternate Lender**” means any Alternate Lender that: (a) has failed to make its Pro Rata Share of any advance required to be made in respect of Loans or any disbursement by the Letter of Credit Issuer in respect of Loans or Letters of Credit, respectively; (b) has otherwise failed to pay over to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one (1) Business Day of the date when due, unless the subject of a good faith dispute; or (c) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

“**Defaulting Investor**” is defined in **Section 2.1(c)** hereof.

“**Designated Exclusion Event**” means that, at any time, either: (a) five (5) Designated Investors are Defaulting Investors, or (b) Designated Investors with an aggregate Unfunded Capital Commitment greater than 10% of the total aggregate Unfunded Capital Commitment of all Investors are Defaulting Investors, *provided*, that for purposes of determining a Designated Exclusion Event, any (i) Designated Investor that becomes a Defaulting Investor but that is replaced by the Credit Parties with a new Designated Investor, or (ii) whose obligations are transferred to any existing Designated Investor or Included Investor in accordance with the terms

of this Credit Agreement and the Operating Agreement or Stockholders Agreement, as applicable, shall not be counted.

“Designated Investor” means any Investor (other than an Included Investor): (a) that has been so designated by 100% of the Lenders (in their sole discretion) as a Designated Investor, as evidenced in writing executed by Administrative Agent; and (b) that has delivered to Administrative Agent the information and documents required under **Section 8.1(p)**; *provided* that, from and after the occurrence of an Investor’s Effective Removal Date, the Investor shall no longer be a Designated Investor until such time as all Exclusion Events affecting such Investor have been cured and such Investor shall have been approved again as a Designated Investor in the sole and absolute discretion of the Required Lenders. Designated Investors approved as such as of the Closing Date are as set forth on **Exhibit A**.

“Dollars” and the sign “\$” means lawful currency of the United States of America.

“Downgrade Collateral Account” is defined in **Section 7.2(a)** hereof.

“Downgrade Draw” is defined in **Section 7.2(a)** hereof.

“Effective Removal Date” means, with respect to any Investor, fifteen (15) Business Days following the occurrence of an Exclusion Event with respect to such Investor.

“Eligible Assignee” means: (a) a Lender or Program Support Provider; (b) an Affiliate of a Lender or an Approved Fund with respect to a Lender; and (c) any other Person approved by: (i) Administrative Agent and, (ii) unless an Event of Default exists and is continuing at the time any assignment is effected in accordance with **Section 14.12(b)** hereof, Borrower, each such approval not to be unreasonably withheld or delayed by Borrower or Administrative Agent, as applicable, and such approval to be deemed given by Borrower if no objection is received by the assigning Lender and Administrative Agent from Borrower within five (5) Business Days after notice of such proposed assignment has been provided by the assigning Lender to Borrower; *provided, however*, that no Credit Party or Affiliate of any Credit Party shall qualify as an **“Eligible Assignee.”**

“Eligible Available Contributions of the Designated Investors” means, as of any date, an amount equal to the sum of the products of (a) the Inclusion Percentage for each Designated Investor multiplied by (b) the Unfunded Capital Commitment of such Designated Investor, *provided*, that at any time a Designated Exclusion Event has occurred and is continuing, the Eligible Available Contributions of all Designated Investors shall be zero.

“Eligible Available Contributions of the Included Investors” means, as of any date, an amount equal to the sum of the products of (a) the Inclusion Percentage for each Included Investor multiplied by (b) the Unfunded Capital Commitment of such Included Investor.

“Environmental Complaint” means any complaint, order, demand, citation or notice threatened or issued in writing to any Credit Party by any Person with regard to air emissions, water discharges, Releases, or disposal of any Hazardous Material, noise emissions or any other environmental, health or safety matter affecting any Credit Party or any of their Properties.

“Environmental Laws” means: (a) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Re-authorization Act of 1986, 42 U.S.C. §9601 *et seq.*; (b) the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 *et seq.*; (c) the Clean Air Act, 42 U.S.C. §7401 *et seq.*, as amended by the Clean Air Act Amendments of 1990; (d) the Clean Water Act of 1977, 33 U.S.C. §1251 *et seq.*; (e) the Toxic Substances Control Act, 15 U.S.C.A. §2601 *et seq.*; (f) all other federal, state and local laws, or ordinances, regulations or policies relating to pollution or protection of human health or the environment including without limitation, air pollution, water pollution, noise control, or the use, handling, discharge, disposal or Release or recovery of on-site or off-site Hazardous Materials, as each of the foregoing may be amended from time to time, applicable to any Credit Party, and (g) any and all regulations promulgated under or pursuant to any of the foregoing statutes.

“Environmental Liability” means any written claim, demand, obligation, cause of action, accusation or allegation, or any order, violation, damage (including, without limitation, to any Person, property or natural resources), injury, judgment, penalty or fine, cost of enforcement, cost of remedial action, cleanup, restoration or any other cost or expense whatsoever, including Attorney Costs and disbursements resulting from the violation or alleged violation of any Environmental Law or the imposition of any Environmental Lien or otherwise arising under any Environmental Law or resulting from any common law cause of action asserted by any Person.

“Environmental Lien” means a Lien in favor of any Governmental Authority: (a) under any Environmental Law; or (b) for any liability or damages arising from, or costs incurred by, any Governmental Authority in response to the Release or threatened Release of any Hazardous Material.

“Environmental Requirement” means any Environmental Law, agreement, or restriction, as the same now exists or may be changed, amended, or come into effect in the future, which pertains to health, safety, or the environment, including, but not limited to ground, air, water, or noise pollution, or underground or aboveground tanks.

“Equity Interest” means, (a) with respect to any member of Borrower, its Membership Interest, and (b) with respect to any Stockholder, its Stockholder Interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder by any Governmental Authority, as from time to time in effect.

“ERISA Investor” means an Investor that is (a) an “*employee benefit plan*” (as such term is defined in Section 3(3) of ERISA) subject to Title I of ERISA, (b) any “*plan*” defined in Section 4975(e) of the Code other than a governmental plan, (c) a group trust, as described in *Revenue Ruling 81-100*, or (d) a partnership or commingled account of a fund, or any other entity, whose assets include or are deemed to include the assets of one or more such employee benefit plans subject to Title I of ERISA, as determined under Section 2510.3-101 or Section 2550.401c-1 of the regulations of the United States Department of Labor or under any other relevant legal authority.

“**Event of Default**” is defined in **Section 12.1** hereof.

“**Excluded Taxes**” means, with respect to any Tax Indemnified Party or any other recipient of any payment to be made by or on account of any obligation of any Credit Party hereunder: (a) taxes imposed on or measured by its net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such Tax Indemnified Party or recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located; (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which such Credit Party is located; and (c) in the case of a Foreign Person (other than an assignee pursuant to a request by the Borrower under **Section 14.14**), any withholding tax that (i) is attributable to such Foreign Person’s failure or inability (other than as a result of a Change in Law) to comply with **Section 4.1(e)**, or (ii) is imposed on amounts payable to such Foreign Person at the time such Foreign Person becomes a party hereto (or designates a new Lending Office) except to the extent of the additional amounts, if any, that such Foreign Person (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive from the Borrower with respect to such withholding tax pursuant to **Section 4.1(a)**.

“**Exclusion Event**” is defined in **Section 2.1(c)** hereof.

“**Facility Amount**” means an amount equal to \$75,000,000 as it may be reduced by Borrower pursuant to **Section 3.6**, or increased pursuant to **Section 2.12** (not to exceed the Maximum Commitment).

“**Facility Increase Request**” means the notice in the form of **Exhibit G** pursuant to which Borrower requests an increase of the Commitments in accordance with **Section 2.12**.

“**Federal Funds Rate**” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate charged to the Administrative Agent on such day on such transactions as determined by it.

“**Fee Letter**” shall mean, collectively, each separate letter agreement by and among Borrower and each Managing Agent and/or Administrative Agent, together with all amendments and modifications thereof.

“**Foreign Person**” means, with respect to any Credit Party, any Tax Indemnified Party that is a resident of or organized under the laws of a jurisdiction other than that in which such Credit Party is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Funding Ratio” means: (a) for a Governmental Plan Investor, the actuarial present value of the assets of the plan over the actuarial present value of the plan’s total benefit liabilities, as reported in such plan’s audited financial statements; and (b) for an ERISA Investor, the funded current liability percentage reported on Schedule B to the most recent Form 5500 filed by such plan with the United States Department of Labor.

“Generally Accepted Accounting Principles” or **“GAAP”** means those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the date hereof, so as to properly reflect the financial position of such Person, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.

“Governmental Authority” means any foreign governmental authority, the United States of America, any State of the United States of America, and any subdivision of any of the foregoing, and any agency, department, commission, board, authority or instrumentality, bureau or court having jurisdiction over any Credit Party, any Agent, any Lender or the Letter of Credit Issuer, or any of their respective businesses, operations, assets, or properties.

“Governmental Plan Investor” means an Investor that is a pension plan and that is a governmental plan as defined in Section 3(32) of ERISA.

“Guaranteed Obligations” means those obligations guaranteed by the Guarantor pursuant to the Guaranty of Capital.

“Guarantor” is defined in the preamble to this Credit Agreement.

“Guaranty” means the guaranty of the Guarantor made pursuant to the Guaranty of Capital.

“Guaranty Obligations” means, with respect to any Person, without duplication, any obligations (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent: (a) to purchase any such Indebtedness or other obligation or any property constituting security therefor; (b) to advance or provide funds or other support for the payment or purchase of such Indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, maintenance agreements, comfort letters, take or pay arrangements, put agreements or similar agreements or arrangements) for the benefit of the holder of Indebtedness of such other Person; (c) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Indebtedness; or (d) to otherwise assure or hold harmless the owner of such Indebtedness or obligation against loss in respect thereof.

“Guaranty of Capital” means that certain Guaranty of Capital, substantially in the form of **Exhibit P**, dated as of the date hereof, executed by Guarantor in favor of Administrative Agent on behalf of the Secured Parties.

“Hazardous Material” means any substance, material, or waste which is or becomes regulated, under any Environmental Law, as hazardous to public health or safety or to the environment, including, but not limited to: (a) any substance or material designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, as amended, 33 U.S.C. §1251 *et seq.*, or listed pursuant to Section 307 of the Clean Water Act, as amended; (b) any substance or material defined as “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 *et seq.*; (c) any substance or material defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 *et seq.*; or (d) petroleum, petroleum products and petroleum waste materials.

“Hedging Agreements” means, collectively, interest rate protection agreements, foreign currency exchange agreements, commodity purchase or option agreements or other interest or exchange rate or commodity price hedging agreements, in each case, entered into or purchased by Borrower.

“Honor Date” is defined in **Section 2.5(c)(i)** hereof.

“Implicit Borrowing Base Deficit” means, on any date of determination, the amount (if any) by which: (a) the aggregate Principal Obligation is in excess of (b) the Borrowing Base (*provided that*, for purposes of this definition, the Borrowing Base shall be calculated as if each Effective Removal Date related to each Exclusion Event shall have occurred).

“Included Investor” means an Investor: (a) that has, or that has a Credit Provider that has, met the Applicable Requirement for such Investor and that has been designated on the Closing Date by Administrative Agent as an “Included Investor”; (b) that has delivered to Administrative Agent the information and documents required under **Section 8.1(p)**; and (c) for Investors being added to the Borrowing Base as an “Included Investor” after the Closing Date, satisfaction of the requirements in **clauses (a)** and **(b)** above and (i) in the case of a Rated Investor, with the consent of the Administrative Agent, acting alone (which shall not be unreasonably withheld) as evidenced in a writing executed by Administrative Agent, and (ii) in the case of a Non-Rated Investor, with the consent of 100% of the Lenders, as evidenced in a writing executed by Administrative Agent; *provided that* a Defaulting Investor shall no longer be an Included Investor until such time as all Exclusion Events affecting such Investor have been cured and such Investor shall have been approved in writing as an Included Investor in the sole and absolute discretion of Administrative Agent, the Letter of Credit Issuer, and all of the Lenders. Included Investors approved as such on the Closing Date are as set forth on **Exhibit A**.

“Inclusion Percentage” means, (a) with respect to each Included Investor and each Designated Investor, the highest percentage (up to 100%) which results in an aggregate amount of Unfunded Capital Commitment of such Investor at such time not exceeding the applicable Concentration Limit (as set forth below) for such Investor as a percentage of the total aggregate Unfunded Capital Commitment of all Investors at such time:

Rating (1)	Concentration Limit (as a percentage of the total aggregate Unfunded Capital Commitment of all Investors)
AAA/Aaa	15.0%
AA-/Aa3	15.0%
A-/A3 or higher	10.0%
BBB/Baa2 or higher	5.0%
Non-Rated Included Investors(2)	15.0%
Designated Investors(3)	2.0%

- (1) Is the lower of the Rating of the Investor (or its Credit Provider, if applicable) as issued by either Standard & Poor's or Moody's. If any Investor has only one Rating from either Standard & Poor's or Moody's, then that Rating shall apply. For any Investor that is an unrated subsidiary of a parent with a Rating, a guaranty from the rated parent entity is required in order to apply the Concentration Limit applicable to the rated parent.
- (2) In the aggregate may not exceed 50% of the total aggregate Unfunded Capital Commitment of all Investors at any time.
- (3) In the aggregate may not exceed 45% of the total aggregate Unfunded Capital Commitment of all Investors at any time.

(b) notwithstanding anything in **clause (a)** of this definition to the contrary, so long as Yale University and/or any of its affiliates qualifies as an Included Investor and has a Rating of AAA/Aaa, its Concentration Limit (collectively with any affiliates) will be 17%.

"Indebtedness" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties and similar instruments;
- (c) all net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);
- (e) all indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being acquired by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all Capital Leases and Synthetic Lease Obligations; and

(g) all Guaranty Obligations of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“**Indemnified Taxes**” means Taxes other than Excluded Taxes.

“**Indemnitee**” is defined in **Section 14.6(b)** hereof.

“**Interest Component**” means, with respect to a Conduit Lender, at any time of determination, the aggregate for all Related Commercial Paper of such Conduit Lender at such time of: (a) with respect to any Commercial Paper issued on an interest bearing basis, the interest payable on such Commercial Paper at its maturity (including any dealer commissions); and (b) with respect to any Commercial Paper issued on a discount basis, the portion of the face amount of such Commercial Paper representing the discount incurred in respect thereof (including any dealer commissions).

“**Interest Period**” means, (a) with respect to any Portion of Loans funded by the issuance of Commercial Paper, (i) initially the period commencing on (and including) the date of the initial purchase or funding of such Portion of Loans and ending on (and including) the last day of the current calendar month, and (ii) thereafter, each period commencing on (and including) the first day after the last day of the immediately preceding Interest Period for such Portion of Loans and ending on (and including) the last day of the current calendar month; and (b) with respect to any Portion of Loans not funded by the issuance of Commercial Paper, (i) initially the period commencing on (and including) the date of the initial purchase or funding of such Portion of Loans and ending on (but excluding) the next following Settlement Date, and (ii) thereafter, each period commencing on (and including) a Settlement Date and ending on (but excluding) the next following Settlement Date; *provided*, that

(A) any Interest Period with respect to any Portion of Loans which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day; *provided, however*, if Yield in respect of such Interest Period is computed by reference to the LIBOR Rate, and such Interest Period would otherwise end on a day which is not a Business Day, and there is no subsequent Business Day in the same calendar month as such day, such Interest Period shall end on the next preceding Business Day;

(B) in the case of any Interest Period for any Portion of Loans which commences before the Maturity Date and would otherwise end on a date occurring after the Maturity Date, such Interest Period shall end on (but exclude) such Maturity Date and

the duration of each Interest Period which commences on or after the Maturity Date shall be of such duration as shall be selected by the applicable Managing Agent; and

(C) any Interest Period in respect of which Yield is computed by reference to the CP Rate may be terminated at the election of applicable Managing Agent, in which case the Portion of Loans allocated to such terminated Interest Period shall be allocated to a new Interest Period commencing on (and including) the date of such termination and ending on (but excluding) the next following Settlement Date, and shall accrue Yield at the Alternate Rate.

“**Internal Revenue Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Investment Period**” has the meaning provided in the Operating Agreement.

“**Investor**” means each of Managing Member, Pledgor, any other member of Borrower or Stockholder of Pledgor, as applicable.

“**Investor Letter**” is defined in **Section 5.1(b)** hereof.

“**Investor Documents**” means the Operating Agreement, the Stockholders Agreement, each Investor Letter, and any amendments or supplements thereto or modifications thereof, executed or delivered pursuant to the terms thereof and this Credit Agreement, and any additional documents delivered in connection with any such amendment, supplement or modification.

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“**Issuer Documents**” means with respect to any Letter of Credit, the Request for Letter of Credit, the Application and Agreement for Letter of Credit, and any other document, agreement and instrument entered into by the Letter of Credit Issuer and a Borrower Party or in favor of the Letter of Credit Issuer and relating to any such Letter of Credit.

“**L/C Advance**” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing. All L/C Advances shall be denominated in Dollars.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Borrowing. All L/C Borrowings shall be denominated in Dollars.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and

permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**Lender**” means each Conduit Lender and each Alternate Lender, as the context may require, and collectively, the “**Lenders**”.

“**Lender Group**” means each of: (a) the YC SUSI Lender Group; and (b) any other “**Lender Group**” from time to time party hereto in accordance with the terms hereof as designated by the Managing Agent of such group.

“**Lender Group Percentage**” means, for any Lender Group, the percentage equivalent (carried out to five decimal places) of a fraction the numerator of which is the aggregate Commitments or Principal Obligation, as applicable, of all Lenders in such Lender Group and the denominator of which is the aggregate Commitments or Principal Obligation, as applicable, of all Lenders in all Lender Groups.

“**Lender Party**” is defined in **Section 13.1(a)** hereof.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender (or an affiliate of such Lender) identified on **Schedule 14.7**, or such other office or offices as a Lender may from time to time notify Borrower and Administrative Agent.

“**Letter of Credit**” means a standby letter of credit issued by the Letter of Credit Issuer pursuant to **Section 2.5** hereof in the form of **Exhibit D-2** hereto (or such other form as approved by the Letter of Credit Issuer) in Dollars either as originally issued or as the same may, from time to time, be amended or otherwise modified or extended.

“**Letter of Credit Expiration Date**” means the day that is the earlier of: (a) fifteen (15) days prior to the Stated Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day); or (b) the date upon which Administrative Agent declares the Obligations due and payable after the occurrence of an Event of Default.

“**Letter of Credit Fees**” is defined in **Section 2.10** hereof.

“**Letter of Credit Issuer**” means Bank of America, or any Lender or Affiliate of such Lender so designated, and which accepts such designation, by Administrative Agent and approved by Borrower.

“**Letter of Credit Liability**” means the aggregate amount of the undrawn face amount of all outstanding Letters of Credit *plus* the amount drawn under Letters of Credit for which the Letter of Credit Issuer and Lenders, or any one or more of them, have not yet received payment or reimbursement (in the form of a conversion of such liability to Loans, or otherwise) as required pursuant to **Section 2.5**. For all purposes of this Credit Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of **Rule 3.14** of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**Letter of Credit Sublimit**” means, at any time, seventy-five percent (75%) of the Facility Amount at such time.

“**LIBOR Rate**” means, for any Interest Period for any Portion of Loans for any Lender Group, a rate per annum determined by Administrative Agent pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{London Interbank Offered Rate}}{1.00 - \text{Eurocurrency Reserve Percentage}}$$

where,

“**London Interbank Offered Rate**” means, for such Interest Period:

(a) the rate per annum (carried out to the fifth decimal place) equal to the rate that appears on the page of the Telerate Screen that displays an average British Bankers Association Interest Settlement Rate (such page currently being page number 3750) for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, or

(b) in the event that the rate referenced in the preceding **subsection (a)** does not appear on such page or service or such page or service shall cease to be available, the rate per annum (carried to the fifth decimal place) equal to the rate determined by Administrative Agent to be the offered rate on such other page or other service that displays an average British Bankers Association Interest Settlement Rate for deposits in Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period, or

(c) in the event the rates referenced in the preceding **subsections (a)** or **(b)** are not available, the rate per annum determined by Administrative Agent as the rate of interest at which deposits in Dollars (for delivery on the first day of such Interest Period) in same day funds in the approximate amount of the applicable Portion of Loans to be funded by reference to the LIBOR Rate and with a term equivalent to such Interest Period would be offered by its London Branch to major banks in the offshore interbank market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; and

“**Eurocurrency Reserve Percentage**” means, for any day during any Interest Period, the maximum effective reserve percentage (expressed as a decimal, carried out to the fifth decimal place) in effect on such date, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor), as such regulation may be amended from time to time or any successor regulation, for determining the maximum reserve requirement (including any supplemental, emergency, or marginal reserve requirement) with respect to eurocurrency funding (currently referred to as “*eurocurrency liabilities*”). The LIBOR Rate shall be

adjusted automatically on and as of the effective date of any change in the Eurocurrency Reserve Percentage.

“**Lien**” means any lien, mortgage, security interest, tax lien, pledge, encumbrance, or conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

“**Liquidity Commitment**” means an amount equal to 102% of the Facility Amount in effect from time to time.

“**Loan**” means an extension of credit by a Lender to a Borrower Party pursuant to the terms and conditions of this Credit Agreement, and “**Loans**” means the plural thereof. All Loans shall be denominated in Dollars.

“**Loan Amount**” is defined in **Section 2.3(g)** hereof.

“**Loan Date**” is defined in **Section 2.3(a)** hereof.

“**Loan Deficit**” is defined in **Section 2.3(h)** hereof.

“**Loan Documents**” means this Credit Agreement, the Notes (including any renewals, extensions, re-issuances and refundings thereof), each Application and Agreement for Letter of Credit, each of the Collateral Documents, the Guaranty of Capital, each Assignment and Assumption Agreement and such other agreements and documents, and any amendments or supplements thereto or modifications thereof, executed or delivered pursuant to the terms of this Credit Agreement or any of the other Loan Documents and any additional documents delivered in connection with any such amendment, supplement or modification.

“**Loan Notice**” means any notice substantially in the form of **Exhibit C**, containing the information specified therein, executed and delivered by a Borrower Party.

“**Managing Agent**” means, with respect to any Lender Group, the Person acting as Managing Agent therefor and designated as such on the signature pages hereto or in the assignment pursuant to which such Lender Group becomes a party hereto, and its successors and assigns.

“**Managing Member**” is defined in the preamble to this Credit Agreement.

“**Margin Stock**” shall have the meaning assigned to such term in Regulation U.

“**Material Adverse Effect**” means any circumstances or events which could reasonably be expected to: (a) have any material adverse effect upon the validity, performance, or enforceability of any of the Loan Documents executed by Borrower, any Qualified Borrower, Managing Member, Guarantor or Pledgor; (b) materially impair the ability of Borrower, Managing Member, Guarantor or Pledgor, or any one of them, to fulfill their respective obligations under the Loan Documents; (c) cause an Event of Default; or (d) impair, impede, or jeopardize, in any material respect, the obligation or the liability of Borrower, Managing

Member, Guarantor or Pledgor to fulfill its obligations under the Operating Agreement, Stockholders Agreement or Partnership Agreement, as applicable.

“**Maturity Date**” means the earliest of: (a) the Stated Maturity Date; (b) the date upon which Administrative Agent declares the Obligations due and payable after the occurrence of an Event of Default; (c) the date upon which Borrower terminates the Commitments pursuant to **Section 3.6** hereof or otherwise and (d) fifteen (15) Business Days prior to the end of the Investment Period.

“**Maximum Commitment**” means an amount equal to \$300,000,000, as it may be reduced by Borrower pursuant to **Section 3.6**.

“**Maximum Rate**” means, on any day, the highest rate of interest (if any) permitted by applicable law on such day.

“**Membership Interest**” means, with respect to any member of Borrower, the equity interest of such member in Borrower.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Non-Defaulting Alternate Lender**” is defined in **Section 2.3(h)** hereof.

“**Non-Extension Notice Date**” is defined in **Section 2.5(b)(iii)** hereof.

“**Non-Rated Investor**” means an Investor that is not a Rated Investor.

“**Non-Rated Included Investor**” means an Included Investor that is not a Rated Investor.

“**Notes**” means the promissory notes provided for in **Section 3.1** hereof, and all promissory notes delivered in substitution or exchange therefor, as such notes may be amended, restated, reissued, extended or modified, and the Qualified Borrower Notes; and “**Note**” means any one of the Notes.

“**Obligations**” means all present and future Indebtedness, obligations, and liabilities of any Credit Party to any of the Secured Parties, and all renewals and extensions thereof (including, without limitation, Loans, Letters of Credit Liability, or both), or any part thereof, arising pursuant to this Credit Agreement (including, without limitation, the indemnity provisions hereof) or represented by the Notes and each Application and Agreement for Letter of Credit, and all interest accruing thereon, and Attorney Costs incurred in the enforcement or collection thereof, regardless of whether such indebtedness, obligations, and liabilities are direct, indirect, fixed, contingent, joint, several, or joint and several; together with all indebtedness, obligations, and liabilities of any Credit Party to any of the Secured Parties evidenced or arising pursuant to any of the other Loan Documents, and all renewals and extensions thereof, or any part thereof.

“**Operating Agreement**” means that certain Operating Agreement of Borrower, by and among Managing Member and Pledgor dated as of May 15, 2007, as supplemented by that certain pledge agreement, dated as of May 15, 2007, from Pledgor to Borrower, as each may be

restated, modified, amended or supplemented from time to time, with the consent of Administrative Agent, the Letter of Credit Issuer, and the Lenders to the extent expressly required hereby.

“**Operating Company**” means an “*operating company*” within the meaning of 29 C.F.R. §2510.3-101(c) of the regulations of the United States Department of Labor.

“**Other Taxes**” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Credit Agreement or any other Loan Document.

“**Participant**” is defined in **Section 14.12(f)**.

“**Partnership Agreement**” means that certain Agreement of Limited Partnership of Guarantor, dated as of May 13, 2003, as previously restated, modified, amended or supplemented from time to time, with the consent of the Administrative Agent, the Letter of Credit Issuer and the Lenders to the extent expressly required hereby.

“**Pending Capital Call**” means any Capital Call that has been made upon the Investors and that has not yet been funded by the applicable Investor, but with respect to which such Investor is not in default.

“**Person**” means an individual, sole proprietorship, joint venture, association, trust, estate, business trust, corporation, limited liability company, nonprofit corporation, partnership, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

“**Plan**” means any plan, including single employer and multi-employer plans to which Section 4021(a) of ERISA applies, or any retirement medical plan, each as established or maintained for employees of Borrower or any member of the Controlled Group to which Section 4021(a) of ERISA applies.

“**Plan Asset Regulations**” means 29 C.F.R §2510.3-101, et seq.

“**Plan Assets**” means “plan assets” within the meaning of the Plan Asset Regulations.

“**Pledgor**” is defined in the first paragraph hereof.

“**Portion of Loan**” is defined in **Section 2.4** hereof.

“**Potential Default**” means any condition, act, or event which, with the giving of notice or lapse of time or both, would become an Event of Default.

“**Principal Obligation**” means the sum of: (a) the aggregate outstanding principal amount of the Loans; *plus* (b) the Letter of Credit Liability.

“**Pro Rata Share**” means, with respect to each Lender, the percentage obtained from the fraction: (a) (i) the numerator of which is the Commitment of such Lender; and (ii) the denominator of which is the aggregate Commitments of all Lenders; or (b) in the event the Commitments are zero (0): (i) the numerator of which is the Principal Obligation outstanding with respect to such Lender; and (ii) the denominator of which is the total Principal Obligation outstanding.

“**Program Support Agreement**” means and includes, with respect to any Conduit Lender, any agreement entered into by any Program Support Provider providing for the issuance of one or more letters of credit for the account of such Conduit Lender (or any related commercial paper issuer that finances such Conduit Lender), the issuance of one or more surety bonds for which such Conduit Lender (or such related issuer) is obligated to reimburse the applicable Program Support Provider for any drawings thereunder, the sale by such Conduit Lender (or such related issuer) to any Program Support Provider of its interests hereunder (or portions thereof or participations therein) or the making of loans or other extensions of credit to such Conduit Lender (or such related issuer) in connection with such Conduit Lender’s (or such related issuer’s) commercial paper program, together with any letter of credit, surety bond or other instrument issued thereunder.

“**Program Support Provider**” means and includes, with respect to any Conduit Lender, any Person now or hereafter extending credit or having a commitment to extend credit to or for the account of, or to make purchases from, such Conduit Lender (or any related commercial paper issuer that finances such Conduit Lender) or issuing a letter of credit, surety bond or other instrument to support any obligations arising under or in connection with such Conduit Lender’s (or such related issuer’s) commercial paper program.

“**Prohibited Event**” is defined in **Section 4.7**.

“**Property**” means any real property, improvements thereon and any leasehold or similar interest in real property which is owned, directly or indirectly, by any Borrower Party, or secures any investment of any Borrower Party.

“**Qualified Borrower**” means any entity, which entity may be organized in the United States or outside of the United States, in which Borrower owns a direct or indirect ownership interest or through which Borrower will acquire an investment, the indebtedness of which entity can be guaranteed by Borrower pursuant to the terms of the Operating Agreement, and which entity has executed a Qualified Borrower Note and in respect of which entity Borrower has executed a Borrower Guaranty.

“**Qualified Borrower Letter of Credit Note**” means a letter of credit note executed and delivered by a Qualified Borrower, in the form of **Exhibit B-3** attached hereto, the payment of which is guaranteed by Borrower pursuant to a Borrower Guaranty, as such note may be amended, restated, reissued, extended or modified.

“**Qualified Borrower Notes**” means the Qualified Borrower Promissory Notes and the Qualified Borrower Letter of Credit Notes, and “**Qualified Borrower Note**” means any one of them, as such note may be amended, restated, reissued, extended or modified.

“**Qualified Borrower Promissory Note**” means a promissory note executed and delivered by a Qualified Borrower, in the form of **Exhibit B-2** attached hereto, the payment of which is guaranteed by Borrower pursuant to a Borrower Guaranty.

“**Rate Type**” means the LIBOR Rate, the Base Rate or the CP Rate.

“**Rated Investor**” means any Investor that has a Rating (or that has a Credit Provider, Sponsor, or Responsible Party that has a Rating).

“**Rating**” means, for any Person, its senior unsecured debt rating (or equivalent thereof, such as, but not limited to, a corporate credit rating, issuer rating/insurance financial strength rating (for an insurance company), general obligation rating (for a governmental entity), or revenue bond rating (for an educational institution)) from either of S&P or Moody’s.

“**Register**” is defined in **Section 14.12(e)** hereof.

“**Regulation T,**” “**Regulation U,**” and “**Regulation X**” means Regulation T, U, or X, as the case may be, of the Board of Governors of the Federal Reserve System, from time to time in effect, and shall include any successor or other regulation relating to reserve requirements or margin requirements, as the case may be, applicable to member banks of the Federal Reserve System.

“**Related Commercial Paper**” means, with respect to any Conduit Lender, at any time of determination, Commercial Paper of such Conduit Lender (or its related commercial paper issuer) the proceeds of which are then allocated by the Administrator of such Conduit Lender (or its related commercial paper issuer) as the source of funding the acquisition or maintenance of its Principal Obligation hereunder.

“**Release**” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration of Hazardous Materials into the environment, or into or out of any Property, including the movement of any Hazardous Material through or in the air, soil, surface water, groundwater, of any Property.

“**Request for Letter of Credit**” means a request for the issuance of a Letter of Credit substantially in the form of **Exhibit D-1** hereto.

“**Required Lenders**” means: (a) Alternate Lenders (other than Defaulting Alternate Lenders) holding an aggregate of more than fifty (50%) of the aggregate Commitments of all Alternate Lenders (other than Defaulting Alternate Lenders); or (b) at any time that the Available Loan Amount is zero (0), Alternate Lenders (other than Defaulting Alternate Lenders) owed an aggregate of more than fifty (50%) of the Principal Obligation outstanding and payable to all Lenders (other than Defaulting Alternate Lenders) at such time (including, for purposes of such calculation, each Alternate Lender’s Alternate Lender Pro Rata Share of that portion of the Principal Obligations outstanding and payable to the Conduit Lender in its Lender Group).

“**Responsible Officer**” means: (a) in the case of a corporation, its president, senior vice president, any vice president or treasurer, and, in any case where two Responsible Officers are acting on behalf of such corporation, the second such Responsible Officer may be a secretary or

assistant secretary; (b) in the case of a limited partnership, the Responsible Officer of the general partner, acting on behalf of such general partner in its capacity as general partner; and (c) in the case of a limited liability company, the chief executive officer, president, general counsel, chief financial officer, or senior vice president of the managing member, acting on behalf of such managing member in its capacity as managing member.

“**Responsible Party**” means, for any Governmental Plan Investor: (a) if the state under which the Governmental Plan Investor operates is obligated to fund the Governmental Plan Investor and is liable to fund any shortfalls, the state; and (b) otherwise, the Governmental Plan Investor itself.

“**S&P**” means Standard & Poor’s Rating Services, a division of the McGraw & Hill Companies, Inc. and any successor thereto.

“**Secured Parties**” means, collectively, the Lenders, Agents, Arranger, Letter of Credit Issuer, Program Support Providers, Conduit Collateral Agents and Indemnitees, and “**Secured Party**” means any of the foregoing.

“**Settlement Date**” means the 12th day of each month (or, if such day is not a Business Day, on the next succeeding Business Day); *provided* that after the Maturity Date, any Business Day selected from time to time by Administrative Agent shall be a Settlement Date.

“**Solvent**” means, with respect to any Person as of a particular date, that on such date: (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business; (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course; (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage; (d) the fair value of the assets of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person; and (e) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured.

“**Sponsor**” of an ERISA Investor means a sponsor as that term is understood under ERISA, specifically, the entity that established the plan and is responsible for the maintenance of the plan and, in the case of a plan that has a sponsor and participating employers, the entity that has the ability to amend or terminate the plan.

“**Stockholder**” means a holder of shares of the equity interests of Pledgor.

“**Stockholders Agreement**” means the Stockholders Agreement of Pledgor, dated as of May 15, 2007, as the same may be amended, restated, supplemented or otherwise modified from time to time with the consent of Administrative Agent, the Letter of Credit Issuer, and the Lenders to the extent expressly required hereby.

“**Stockholders Interest**” means, with respect to any Stockholder, its equity interest in Pledgor.

“**Stated Maturity Date**” means October 10, 2011.

“**Subsequent Investor**” is defined in **Section 11.5(c)** hereof.

“**Swap Contract**” means: (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement; and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any such obligations or liabilities under any such master agreement.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts: (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s); and (b) for any date prior to the date referenced in **clause (a)**, the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“**Synthetic Lease Obligation**” means the monetary obligation of a Person under: (a) a so-called synthetic, off-balance sheet or tax retention lease; or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“**Tax Indemnified Parties**” means, collectively, the Letter of Credit Issuer, the Lenders, Agents, the Program Support Providers and Conduit Collateral Agents, and “**Tax Indemnified Party**” means any of the foregoing.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**UCC**” is defined in **Section 8.1**.

“**Unfunded Capital Commitment**” means, with respect to any Investor at any time: (a) such Investor’s Capital Commitment at such time, excluding (1) any Capital Commitment subject to a Pending Capital Call and (2) returns of Capital Contributions, unless a confirmation certificate in form and substance satisfactory to the Administrative Agent has been received by the Administrative Agent from a Credit Party, reporting the returned Capital Contributions and providing the amounts of the remaining unfunded Capital Commitments of the Investors; *minus* (b) such Investor’s aggregate Capital Contributions made prior to such time.

“**Unreimbursed Amount**” is defined in **Section 2.5(c)(i)** hereof.

“**Used Fee**” has the meaning provided in the Fee Letter.

“**YC SUSI**” means YC SUSI Trust, a Delaware Statutory Trust.

“**YC SUSI Alternate Lenders**” means the Alternate Lenders in the YC SUSI Lender Group, as set forth on the signature pages hereto or the applicable Assignment and Assumption Agreement.

“**YC SUSI Lender Group**” means YC SUSI, any permitted Conduit Assignee thereof, the YC SUSI Alternate Lenders from time to time party hereto and Bank of America, as Managing Agent.

“**Yield**” means, the sum of:

(a) for any Portion of Loans for any Lender Group during any Interest Period to the extent a Conduit Lender funds such Portion of Loans through the issuance of Commercial Paper (directly or indirectly through a related commercial paper issuer);

$$\text{CPR} \times \text{L} \times \frac{\text{D}}{360}$$

(b) for any Portion of Loans funded by the Alternate Lenders and for any Portion of Loans for any Lender Group to the extent the related Conduit Lender does not fund such Portion of Loans through the issuance of Commercial Paper (directly or indirectly through a related commercial paper issuer);

$$\text{AR/BR} \times \text{L} \times \frac{\text{D}}{360}$$

where:

AR/BR = the Alternate Rate or Base Rate, as applicable, for such Portion of Loans for such Interest Period;

CPR = the CP Rate for such Portion of Loans for such Interest Period (as determined by each applicable Administrator on or prior to the fifth Business Day of the calendar month next following such Interest Period);

D = the actual number of days during such Interest Period, and

L = the amount of such Portion of Loans during such Interest Period;

provided that no provision of this Credit Agreement shall require the payment or permit the collection of Yield in excess of the Maximum Rate; and *provided, further*, that at all times during the existence of an Event of Default or after the Maturity Date, Yield for all Portions of Loans shall accrue at the Default Rate. Without limiting the obligation of any Borrower Party to pay interest pursuant to **Section 3.3**, Yield shall include interest pursuant to **Section 3.3** on the Principal Obligation and all other Obligations not paid or deposited when due under this Credit Agreement or under the Notes.

1.2. Other Definitional Provisions.

- (a) All terms defined in this Credit Agreement shall have the above-defined meanings when used in the Notes or any other Loan Documents or any certificate, report or other document made or delivered pursuant to this Credit Agreement, unless otherwise defined in such other document.
- (b) Defined terms used in the singular shall import the plural and vice versa.
- (c) The words “hereof,” “herein,” “hereunder,” and similar terms when used in this Credit Agreement shall refer to this Credit Agreement as a whole and not to any particular provisions of this Credit Agreement.
- (d) The term “including” is by way of example and not limitation. The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.
- (e) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”
- (f) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Credit Agreement or any other Loan Document.
- (g) Unless otherwise specified in the Loan Documents, time references are to time in New York, New York.

1.3. Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the documents issued in connection therewith, but only to the extent such maximum face amount is in effect at such time.

2. LOANS AND LETTERS OF CREDIT

2.1. The Commitment.

(a) **Committed Amount.** Subject to the terms and conditions herein set forth, including **Sections 8.1, 8.2** (if applicable) and **8.3**, Lenders having Commitments agree severally, during the Availability Period: (i) to extend to Borrower or any Qualified Borrower a revolving line of credit; and (ii) to participate in Letters of Credit issued by the Letter of Credit Issuer for the account of Borrower or any Qualified Borrower.

(b) **Limitation on Borrowings.** Notwithstanding anything to the contrary herein contained, Lenders shall not be required to advance any Borrowing or cause the issuance of any Letter of Credit hereunder if:

(i) after giving effect to such Borrowing or issuance of such Letter of Credit: (A) the Principal Obligation would exceed the Available Loan Amount; (B) the Letter of Credit Liability would exceed the Letter of Credit Sublimit; or (C) any Implicit Borrowing Base Deficit would exist; or

(ii) an Event of Default or a Potential Default exists.

(c) **Exclusion Events.** If any of the following events (each, an “**Exclusion Event**”) shall occur with respect to any Designated Investor or any Included Investor or, if applicable, the Sponsor, Responsible Party, or Credit Provider of such Investor (such Investor hereinafter referred to as a “**Defaulting Investor**”):

(i) it shall: (A) apply for or consent to the appointment of a receiver, trustee, custodian, intervenor, or liquidator of itself or of all or a substantial part of its assets; (B) file a voluntary petition as debtor in bankruptcy or admit in writing that it is unable to pay its debts as they become due; (C) make a general assignment for the benefit of creditors; (D) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any Debtor Relief Laws; (E) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization, or insolvency proceeding; or (F) take any personal, partnership, limited liability company, corporate or trust action, as applicable, for the purpose of effecting any of the foregoing;

(ii) an order, order for relief, judgment, or decree shall be entered by any court of competent jurisdiction or other competent authority approving a petition seeking such Person’s reorganization or appointing a receiver, custodian, trustee, intervenor, or liquidator of such Person or of all or substantially all of its assets, and such order, judgment, or decree shall continue unstayed and in effect for a period of sixty (60) days;

(iii) any final judgment(s) for the payment of money which in the aggregate exceed fifteen percent (15%) of its net worth shall be rendered against such Person, and such judgment or judgments shall not be satisfied or discharged

at least ten (10) days prior to the date on which any of its assets could be lawfully sold to satisfy such judgment;

(iv) such Investor shall repudiate, challenge, or declare unenforceable its obligation to make contributions to the capital of the applicable Credit Party pursuant to its Capital Commitment or a Call Notice; shall otherwise disaffirm any material provision of the Operating Agreement, the Stockholders Agreement or the Partnership Agreement, as applicable; or shall otherwise disaffirm any material provision of its Investor Letter; or a court of competent jurisdiction finds such Capital Commitment or the obligations under its Investor Letter unenforceable;

(v) such Investor shall fail to make a contribution to the capital of the applicable Credit Party when required pursuant to a Call Notice, subject to any applicable notice or cure periods, or shall otherwise be in material default under the Operating Agreement, the Stockholders Agreement, its Investor Letter or any Loan Document, following any applicable notice requirements or cure periods;

(vi) any representation or warranty made under its Investor Letter or any Loan Documents executed by such Person shall prove to be untrue or inaccurate in any material respect, as of the date on which such representation or warranty is made, and such Person shall fail to cure the adverse effect of the failure of such representation or warranty within thirty (30) days after written notice thereof is delivered by Administrative Agent to Borrower and to such Person;

(vii) such Investor shall transfer its Equity Interest in Borrower or Pledgor, as applicable, in violation of this Credit Agreement;

(viii) default shall occur in the performance by it of any of the covenants or agreements contained in its Investor Letter, the Operating Agreement, the Stockholders Agreement or the Partnership Agreement (except, in each case, as otherwise specifically addressed in this **Section 2.1(c)**, in which case no grace period beyond any provided for herein shall apply) and such default shall continue uncured to the satisfaction of Administrative Agent for a period of thirty (30) days after written notice thereof has been given by Administrative Agent to Borrower and to such Investor;

(ix) in the case of each Included Investor that is a Rated Investor, it shall fail to maintain the Applicable Requirement for such Investor required in the definition of Applicable Requirement in **Section 1** hereof;

(x) in the case of any Non-Rated Included Investor, such Investor shall fail to maintain a net worth (determined in accordance with Generally Accepted Accounting Principles), measured at the end of each fiscal year of such Person, of at least seventy-five percent (75%) of the initial net worth of such Investor, Sponsor, Responsible Party, or Credit Provider measured at the end of the fiscal

year preceding the designation of such Investor as an Included Investor hereunder; or

(xi) in the case of each Designated Investor and Non-Rated Included Investor, following the occurrence of an event which materially adversely affects the ability of such Investor to fulfill its obligations under the Operating Agreement or the Stockholders Agreement, as applicable, and the Required Lenders elect to declare the occurrence of an Exclusion Event with respect to such Investor,

then as of the Effective Removal Date for such Exclusion Event, such Investor shall no longer be a Designated Investor or an Included Investor, as applicable, and Administrative Agent and the Borrower Parties shall treat such Defaulting Investor's Capital Commitment and Unfunded Capital Commitment as zero (0) for purposes of: (A) calculating the aggregate Unfunded Capital Commitment of the Designated Investors or Included Investors, as applicable, with respect to this Credit Agreement; (B) calculating the Available Loan Amount and Borrowing Base; and (C) calculating whether a mandatory prepayment is required to be made by Borrower pursuant to **Section 2.1(d)**.

(d) Mandatory Prepayment.

(i) **Excess Loans Outstanding.** If, on any day, the Principal Obligation exceeds the Available Loan Amount or if an Implicit Borrowing Base Deficit exists (including, without limitation, as a result of an Exclusion Event), then the Credit Parties shall pay on demand such excess or amount of Implicit Borrowing Base Deficit, as applicable, to Administrative Agent, for the benefit of Lenders, in immediately available funds (except to the extent any such excess is otherwise addressed by **Section 2.1(d)(ii)**): (A) promptly on demand (but in no event later than one (1) Business Day), to the extent such funds are available in the Collateral Account or another account maintained by Borrower; and (B) within fifteen (15) Business Days of demand to the extent that it is necessary for a Credit Party to issue Call Notices to fund such required payment (and the Credit Parties shall issue such Call Notices during such time, and shall pay such excess or amount of Implicit Borrowing Base Deficit, as applicable, immediately after the Capital Contributions relating to such Call Notice are received); *provided* that the amount of such excess shall be paid to Administrative Agent concurrently with the creation of such excess or deficit if it results from any willful act of any Credit Party. The Credit Parties hereby agree that Administrative Agent may withdraw from the Collateral Account any Capital Contributions deposited therein in respect of such Call Notices until the payment obligations required by this **Section 2.1(d)(i)** have been satisfied in full.

(ii) **Excess Letters of Credit Outstanding.** If any excess or amount of Implicit Borrowing Base Deficit, as applicable, calculated pursuant to **Section 2.1(d)(i)** is attributable to undrawn Letters of Credit, the Credit Parties shall Cash Collateralize the Letter of Credit Liability in the amount of such excess or Implicit Borrowing Base Deficit, as applicable, when required pursuant to the

terms of **Section 2.1(d)(i)**, as security for such portion of the Obligations. Unless otherwise required by law, upon: (i) a change in circumstances such that the Principal Obligation no longer exceeds the Available Loan Amount; or (ii) the full and final payment of the Obligations, Administrative Agent shall return to the Credit Parties (or the applicable Qualified Borrower) any amounts remaining in said cash collateral account.

(e) **Loans in Dollars.** Each Loan made pursuant to this Credit Agreement shall be both funded and payable in Dollars.

2.2. Revolving Credit Commitment. Subject to the terms and conditions herein set forth, each Alternate Lender severally agrees, on any Business Day during the Availability Period, to make Loans to Borrower or any Qualified Borrower at any time and from time to time in an aggregate principal amount up to such Lender's Commitment at any such time; *provided, however*, that, after making such Loans: (a) such Lender's Pro Rata Share of the Principal Obligation would not exceed such Lender's Commitment as of such date; and (b) the Principal Obligation of such Lender's Lender Group would not exceed the aggregate Commitment of the Alternate Lenders in such Lender Group. Subject to the foregoing limitation, the conditions set forth in **Section 8** and the other terms and conditions hereof, Borrower or any Qualified Borrower may borrow, repay without penalty or premium, and re-borrow hereunder, during the Availability Period. Each Borrowing pursuant to this **Section 2.2** shall be funded ratably by each Lender Group in accordance with its Lender Group Percentage. No Lender shall be obligated to fund any Loan if the interest rate applicable thereto under **Section 2.11** hereof would exceed the Maximum Rate in effect with respect to such Loan.

2.3. Borrowing Procedures.

(a) **Loan Notice.** The applicable Borrower Party may request a Loan hereunder by delivering to Administrative Agent, by electronic mail, facsimile or by telephone notice followed by the written confirmation via electronic mail or other evidence of writing, a Loan Notice, appropriately completed and signed by a Responsible Officer of such Borrower Party (and each Loan Notice submitted by a Qualified Borrower must be countersigned by a Responsible Officer of Borrower), no later than 11:00 a.m. at least two (2) Business Days prior to the proposed date of any Loan (including the initial Loan). Each such Loan Notice shall specify: (i) the desired amount of such Loan, which shall be (a) at least \$500,000 at all times when there is only one Alternate Lender party hereto, and (b) at least \$1,000,000 at all times when there are two or more Alternate Lenders party hereto; (ii) the desired date of such Loan (the "**Loan Date**"), which shall be a Business Day; and (iii) such other information as is required by the form of such Loan Notice. Each Loan Notice submitted by such Borrower Party shall be deemed to constitute a representation and warranty by the applicable Borrower Party that: (i) the representations and warranties set forth in **Section 9** hereof are true and correct in all material respects on and as of the date of such Loan Notice, with the same force and effect as if made on and as of such date (except to the extent of changes in facts or circumstances that have been disclosed to the Administrative Agent and do not constitute an Event of Default or a Potential Default under this Credit Agreement or any other Loan Document); (ii) no Event of Default or, to its knowledge, Potential Default

exists and is continuing at such date; (iii) the conditions specified in **Sections 8.1, 8.2** (if applicable) and **8.3**, have been or will be satisfied as of the Loan Date; and (iv) after giving effect to such Borrowing, the Principal Obligation will not exceed the Available Loan Amount as of such date. No Loan Notice shall be valid hereunder for any purpose unless it shall have been accompanied or preceded by the information and other documents required to be delivered in accordance with this **Section 2.3**. All Loans hereunder shall be made by each Lender Group on a *pro rata* basis based on the Lender Group Percentage of each Lender Group.

(b) **Further Information.** Each Loan Notice shall be accompanied or preceded by: (A) a Borrowing Base Certificate dated the date of such Loan Notice; and (B) such documents as are required to satisfy any applicable conditions precedent as provided in **Section 8.2**.

(c) **Notification of Conduit Lender.** Administrative Agent will promptly notify each Managing Agent of Administrative Agent's receipt of any Loan Notice, and each Managing Agent will promptly notify each of the Lenders in its Lender Group. If the Loan Notice is received prior to the Conduit Investment Termination Date for a Conduit Lender, such Conduit Lender (or its Administrator on its behalf) shall instruct Administrative Agent to accept or reject such Loan Notice by notice given to Administrative Agent and the applicable Borrower Party by telephone or facsimile by no later than the close of its business on the later of the Business Day of its receipt of any such Loan Notice or the Business Day prior to the applicable Loan Date.

(d) **Loan Notice Irrevocable.** Each Loan Notice shall be irrevocable and binding on such Borrower and any applicable Qualified Borrower, and Borrower (and, if applicable, the Qualified Borrower) shall indemnify Lenders against any cost, loss, or expense incurred by Lenders, or any of them, as a result of any failure to fulfill, on or before the date specified in the Loan Notice, the conditions to such Borrowing set forth herein, including, without limitation, any cost, loss, or expense incurred by reason of the liquidation or redeployment of the deposits or other funds acquired by Lenders, or any of them, to fund the Borrowing to be made by Lenders as a part of such Borrowing when such Borrowing, as a result of such failure, is not made on such date (including, in the case of a Conduit Lender, pursuant to a Program Support Agreement), except with respect to a Borrowing for a Loan at the Base Rate, as to which Borrower shall not be required to indemnify Lenders against such costs, losses or expenses incurred by Lenders as a result of such liquidation or redeployment of funds. A certificate of Administrative Agent setting forth the amount of any such cost, loss or expense, and the basis for the determination thereof and the calculation thereof, shall be delivered to Borrower and the applicable Qualified Borrower and shall, in the absence of a manifest error, be conclusive and binding

(e) **Alternate Lender's Commitment.** At no time will any Conduit Lender have any obligation to fund a Loan or participate in any Letter of Credit. At all times on and after the Conduit Investment Termination Date for a Conduit Lender or if a Conduit Lender has failed for whatever reason to fund its portion of a Borrowing in full, all Loans and participations in Letters of Credit shall be made by the Alternate Lenders of the

related Lender Group. At any time when a Conduit Lender has rejected a request for Loan (it being understood that if a Conduit Lender does not fund any Loan in relation to which all of the conditions precedent set forth in **Section 8.2** (if applicable) and **Section 8.3** have been satisfied on the date set forth in the applicable Loan Notice, such Conduit Lender shall be deemed to have rejected the request for Loan), the related Managing Agent shall so notify the related Alternate Lenders and such Alternate Lenders shall make such Loan, on a *pro rata* basis, in accordance with their respective Alternate Lender Pro Rata Shares. Notwithstanding anything contained in this **Section 2.3(e)** or elsewhere in this Credit Agreement to the contrary, no Alternate Lender shall be obligated to provide Administrative Agent or any Borrower Party with funds in connection with a Loan in an amount that would result in the sum of the portion of the Loans then funded by it plus such Alternate Lender's Alternate Lender Pro Rata Share of the applicable Lender Group Percentage of the Letter of Credit Liability exceeding its Commitment then in effect (minus the unrecovered principal amount of such Alternate Lender's investments in the Principal Obligation pursuant to the Program Support Agreement to which it is a party). The obligation of each Alternate Lender to remit its Alternate Lender Pro Rata Share of any such Loan requested of its Lender Group shall be several from that of each other Alternate Lender, and the failure of any Alternate Lender to so make such amount available to Administrative Agent shall not relieve any other Alternate Lender of its obligation hereunder.

(f) **Payment of Loan.** On any Loan Date, each Conduit Lender or each Alternate Lender, as the case may be, shall remit its share of the aggregate amount of such Loan to Administrative Agent, by wire transfer of immediately available funds to Administrative Agent for the account of the appropriate Borrower Party no later than 12:00 noon. Administrative Agent shall in turn forward the same in immediately available funds to the appropriate Borrower Party's account at Administrative Agent specified in the Loan Notice, or, if requested by the applicable Borrower Party in the Loan Notice, wire transfer such funds as requested.

(g) **Managing Agents May Advance Funds.** Unless a Managing Agent shall have received notice from any Lender in its Lender Group that such Person will not make its share of any Loan available on the applicable Loan Date therefor (for purposes of this paragraph only, the "**Loan Amount**"), such Managing Agent may (but shall have no obligation to) make any such Lender's share of any such Loan available to the applicable Borrower Party in anticipation of the receipt by such Managing Agent of such Loan Amount from the applicable Lender. To the extent any such Lender fails to remit such Loan Amount to such Managing Agent after any such advance by such Managing Agent on such Loan Date, such Lender shall be required to pay such Loan Amount for its own account, together with interest thereon at a per annum rate equal to the Federal Funds Rate to such Managing Agent upon its demand therefor. If such Lender does not pay such Loan Amount together with such interest, such Managing Agent will promptly notify the Borrower, and Borrower shall immediately pay such Loan Amount to Administrative Agent (for distribution to the applicable Managing Agent), together with interest thereon from the applicable Loan Date through the date such Loan Amount is repaid to Administrative Agent promptly on demand, to the extent such funds are available in the Collateral Account; and otherwise, to the extent that it is necessary for

Borrower to issue Call Notices to fund such required payment, within fifteen (15) Business Days after Administrative Agent's demand (but, in any event, the Credit Parties shall issue such Call Notices and shall make such payment promptly after the related Capital Contributions are received); or (ii) from any Qualified Borrower (as applicable), promptly on demand; in each case, together with interest at a rate per annum equal to the rate applicable to the requested Borrowing for the period commencing on the borrowing date and ending on (but excluding) the date Administrative Agent recovers the amount from Borrower. Until such amount shall be repaid, such amount shall be deemed to be a Loan funded by the applicable Managing Agent and such Managing Agent shall be deemed to be the owner of such Loan. Upon the payment of such amount to Administrative Agent by such Lender, such payment shall constitute such Person's payment of its share of the applicable Loan.

(h) **Defaulting Alternate Lender.** If, by 2:00 p.m. on any Loan Date or Assignment Date, as applicable, whether or not any Managing Agent has advanced the amount of the applicable Loan or paid the applicable Assignment Amount, one or more Alternate Lenders in a Lender Group (each, a "**Defaulting Alternate Lender**", and each Alternate Lender other than any Defaulting Alternate Lender being referred to as a "**Non-Defaulting Alternate Lender**") fails to make its share of any Loan available to Administrative Agent pursuant to **Section 2.3(f)** or any Assignment Amount payable by it pursuant to **Section 7.1** (the aggregate amount not so made available to Administrative Agent being herein called in either case the "**Loan Deficit**"), then such Alternate Lender's Managing Agent shall, by no later than 2:30 p.m. on the applicable Loan Date or the applicable Assignment Date, as the case may be, instruct each Non-Defaulting Alternate Lender in such Lender Group to pay, by no later than 3:00 p.m. on such date, in immediately available funds, to the account designated by Administrative Agent, an amount equal to the lesser of: (i) such Non-Defaulting Alternate Lender's proportionate share (based upon the relative Commitments of the Non-Defaulting Alternate Lenders) of the Loan Deficit with respect to such Lender Group; and (ii) its unused Commitment. A Defaulting Alternate Lender shall forthwith, upon demand, pay to its related Managing Agent for the ratable benefit of the Non-Defaulting Alternate Lenders all amounts paid by each Non-Defaulting Alternate Lender on behalf of such Defaulting Alternate Lender, together with interest thereon, for each day from the date a payment was made by a Non-Defaulting Alternate Lender until the date such Non-Defaulting Alternate Lender has been paid such amounts in full, at a rate *per annum* equal to the Default Rate. In addition, if, after giving effect to the provisions of the immediately preceding sentence, any Loan Deficit with respect to any Assignment Amount continues to exist, each such Defaulting Alternate Lender shall pay interest to the related Managing Agent, for the account of the related Conduit Lender, on such Defaulting Alternate Lender's portion of such remaining Loan Deficit, at a rate *per annum*, equal to the Default Rate, for each day from the applicable Assignment Date until the date such Defaulting Alternate Lender shall pay its portion of such remaining Loan Deficit in full to such Conduit Lender.

(i) **Intent to Fund.** Subject to **Section 2.4**, each Conduit Lender confirms with Borrower that it intends to fund all Loans hereunder through the issuance of its Commercial Paper to the extent reasonably available prior to the occurrence of an Event of Default or Potential Default.

2.4. Determination of Yield and Interest Periods. For purposes of determining the Interest Period applicable to each Loan and of calculating Yield with respect thereto, each applicable Managing Agent shall allocate the Loans of the Lenders in its Lender Group to tranches (each a “**Portion of Loan**”). Any Portion of Loan funded by a Conduit Lender may from time to time be funded through the issuance of Commercial Paper or pursuant to a Program Support Agreement, in the sole discretion of such Conduit Lender. Any Portion of Loan funded by the Alternate Lenders or the applicable Program Support Providers shall accrue Yield at the Alternate Rate or Base Rate, as selected by the Borrower. Any Portion of Loan funded by the Conduit Lenders through the issuance of Commercial Paper shall accrue Yield at the applicable CP Rate. At any time, each Portion of Loan shall have only one Interest Period and one Rate Type. The aggregate Portions of Loans of each Lender Group at all times shall be equal to the Loans of such Lender Group, and at any time when the Loans are not divided into two or more portions, the term “**Portion of Loans**” shall mean 100% of the Loans of such Lender Group.

2.5. Letters of Credit.

(a) Letter of Credit Commitment.

(i) Subject to the terms and conditions hereof, on any Business Day during the Availability Period: (A) the Letter of Credit Issuer agrees, in reliance upon the agreements of the Lenders set forth in this **Section 2.5**: (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars for the account of a Borrower Party, in aggregate face amounts that shall be not less than \$500,000 (*provided, however, three (3) Letters of Credit for amounts less than \$500,000 may be issued each calendar year*), as a Borrower Party may request, and to amend or extend Letters of Credit previously issued by it; and (2) to honor drawings under the Letters of Credit; and (B) the Alternate Lenders severally agree to participate in Letters of Credit issued for the account of a Borrower Party and any drawings thereunder; provided that after giving effect to an issuance of a Letter of Credit; (1) the Principal Obligation will not exceed the Available Loan Amount on such date; (2) no Implicit Borrowing Base Deficit shall exist and (3) the Letter of Credit Liability will not exceed the Letter of Credit Sublimit. Within the foregoing limits, and subject to the terms and conditions hereof, a Borrower Party’s ability to obtain Letters of Credit shall be fully revolving, and accordingly a Borrower Party may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. The Letter of Credit Issuer shall have the right to approve the form of Letter of Credit requested.

(ii) The Letter of Credit Issuer shall not issue or extend any Letter of Credit, if: (A) subject to **Section 2.5(b)(iii)**, the expiration date of such Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Letter of Credit Issuer has approved such expiry date in its sole discretion; or (B) the expiration date of such Letter of Credit would occur after the date fifteen (15) Business Days prior to the Stated Maturity Date, unless the Borrower or applicable Qualified Borrower shall Cash Collateralize the then-

outstanding Letter of Credit Liability in respect of such Letter of Credit fifteen (15) Business Days prior to the then-applicable Stated Maturity Date, and such Letter of Credit has an expiration date that is not later than twelve (12) months following the Stated Maturity Date.

(iii) The Letter of Credit Issuer shall be under no obligation to issue any Letter of Credit if: (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Letter of Credit Issuer from issuing such Letter of Credit, or any Law applicable to the Letter of Credit Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Letter of Credit Issuer shall prohibit, or request that the Letter of Credit Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Letter of Credit Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Letter of Credit Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Letter of Credit Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Letter of Credit Issuer in good faith deems material to it; (B) the issuance of such Letter of Credit would violate any Laws or one or more policies of the Letter of Credit Issuer; (C) such Letter of Credit is to be denominated in a currency other than Dollars; (D) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or (E) a default of any Lender's obligations to fund hereunder exists or any Lender is at such time a Defaulting Alternate Lender hereunder, unless the Letter of Credit Issuer has entered into satisfactory arrangements with the Borrower Parties or such Lender to eliminate the Letter of Credit Issuer's risk with respect to such Lender.

(iv) The Letter of Credit Issuer shall be under no obligation to amend any Letter of Credit if: (A) the Letter of Credit Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof; or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of a Borrower Party delivered to the Letter of Credit Issuer (with a copy to Administrative Agent) in the form of a Request for Letter of Credit and an Application and Agreement for Letter of Credit, together with a Borrowing Base Certificate, each appropriately completed and signed by a Responsible Officer of such Borrower Party. Such Request for Letter of Credit must be received by the Letter of Credit Issuer and Administrative Agent not later than 11:00 a.m. at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be, of any Letter of Credit (or such later date and time as Administrative Agent and the Letter of Credit Issuer may agree

in a particular instance in their sole discretion). In the case of a request for an initial issuance of a Letter of Credit, such Request for Letter of Credit shall specify in form and detail satisfactory to the Letter of Credit Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the Letter of Credit Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, the related Request for Letter of Credit shall specify in form and detail satisfactory to the Letter of Credit Issuer: (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the Letter of Credit Issuer may reasonably require. Additionally, the applicable Borrower Party shall furnish to the Letter of Credit Issuer and Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the Letter of Credit Issuer or Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Request for Letter of Credit, the Letter of Credit Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such Request for Letter of Credit from a Borrower Party and, if not, the Letter of Credit Issuer will provide Administrative Agent with a copy thereof. The Letter of Credit Issuer shall also promptly notify each Managing Agent (which in turn shall promptly notify each Lender in its Lender Group) of the Request for Letter of Credit and the terms thereof. Unless the Letter of Credit Issuer has received written notice from any Lender, Administrative Agent or any Borrower Party, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in **Section 8** shall not then be satisfied, then, subject to the terms and conditions hereof, the Letter of Credit Issuer shall, on the requested date, issue a Letter of Credit for the account of such Borrower Party or enter into the applicable amendment, as the case may be, in each case in accordance with the Letter of Credit Issuer's usual and customary business practices.

(iii) If a Borrower Party so requests in any applicable Request for Letter of Credit, the Letter of Credit Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that any such Auto-Extension Letter of Credit must permit the Letter of Credit Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a Business Day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Letter of Credit

Issuer, a Borrower Party shall not be required to make a specific request to the Letter of Credit Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Letter of Credit Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided, however*, that the Letter of Credit Issuer shall not permit any such extension if: (A) the Letter of Credit Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of *clause (ii) or (iii) of Section 2.5(a)* or otherwise); or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five Business Days before the Non-Extension Notice Date: (1) from Administrative Agent that the Required Lenders have elected not to permit such extension; or (2) from Administrative Agent, any Lender or any Borrower Party that one or more of the applicable conditions specified in **Section 8.2** and, if applicable, **Section 8.3**, is not then satisfied, and in each such case directing the Letter of Credit Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Letter of Credit Issuer will also deliver to the applicable Borrower Party and Administrative Agent and each Managing Agent a true and complete copy of such Letter of Credit or amendment.

(v) Whenever the Letter of Credit Issuer issues a Letter of Credit, each Alternate Lender shall, automatically and without further action of any kind upon the effective date of issuance of such Letter of Credit, have irrevocably (i) agreed to acquire a participation interest therein in an amount equal to its Alternate Lender Pro Rata Share of its Lender Group Percentage of the Letter of Credit Liability attributable to such Letter of Credit and (ii) committed to make a Loan hereunder equal to its Alternate Lender Pro Rata Share of its Lender Group Percentage of the applicable reimbursement amount in the event that such Letter of Credit is subsequently drawn and such drawn amount shall not have been reimbursed by a Borrower Party upon such draw or a Loan with respect to such unreimbursed draw is not made by such Alternate Lender's related Conduit Lender. In the event that any Letter of Credit expires or is surrendered to the Letter of Credit Issuer without being drawn (in whole or in part) then, in such event, the foregoing commitment to make Loans with respect to draws under such Letter of Credit shall expire with respect to such Letter of Credit and the Letter of Credit Liability shall automatically reduce by the amount of the Letter of Credit which is no longer outstanding. Each Lender shall share in all rights and obligations resulting therefrom, in accordance with such participation interest, including, without limitation: (i) the right to receive from Administrative Agent its share of any reimbursement of the amount of each draft drawn under each Letter of Credit, including any interest payable with respect thereto; (ii) the right to receive from the Letter of Credit Issuer its share of the Letter of Credit Fees pursuant to **Section 2.10** hereof; (iii) the right to receive from the Letter of Credit

Issuer its additional costs pursuant to **Section 4** hereof; and (iv) the obligation to reimburse Administrative Agent in the form of a Loan to the applicable Borrower Party hereunder upon receipt of notice of any payment by the Letter of Credit Issuer.

(c) Drawings and Reimbursements; Funding of Participation.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Letter of Credit Issuer shall notify the applicable Borrower Party and Administrative Agent thereof. Not later than 11:00 a.m. on the date of any payment by the Letter of Credit Issuer under a Letter of Credit (each such date, an "**Honor Date**"), the applicable Borrower Party shall reimburse the Letter of Credit Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If a Borrower Party fails to so reimburse the Letter of Credit Issuer by such time, the Administrative Agent shall promptly notify each Managing Agent of the Honor Date, the amount of the unreimbursed drawing (the "**Unreimbursed Amount**"), and the amount of such Lender Group's Lender Group Percentage thereof. Each such notice by the Letter of Credit Issuer shall be treated as a Loan Notice by the applicable Borrower Party. In such event, the applicable Borrower Party shall be deemed to have requested a Borrowing to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in **Section 2.3**, but subject to the amount of the unutilized portion of the Available Loan Amount and the conditions set forth in **Section 8.2**, if applicable, and **Section 8.3** (other than the delivery of a Loan Notice). Any notice given by the Letter of Credit Issuer or Administrative Agent pursuant to this **Section 2.5(c)(i)** may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) If the Letter of Credit Issuer so notifies a Managing Agent prior to 11:00 a.m. on any Business Day, such Managing Agent's related Lender Group shall make available to Administrative Agent, for the account of the Letter of Credit Issuer, its Lender Group Percentage of the Unreimbursed Amount by 4:30 p.m. on such Business Day (or a subsequent day specified by Administrative Agent) in immediately available funds. If the Letter of Credit Issuer so notifies a Managing Agent after 11:00 a.m. on any Business Day, such Managing Agent's related Lender Group shall make available to Administrative Agent for the account of the Letter of Credit Issuer its Lender Group Percentage of the Unreimbursed Amount by 12:00 noon on the next Business Day (or a subsequent day specified by Administrative Agent) in immediately available funds. If any amounts have been deposited into a segregated interest-bearing cash collateral account for the purpose of Cash Collateralizing the Letter of Credit Liability, the Letter of Credit Issuer shall use such funds to satisfy any drawings under the Letters of Credit prior to notifying the Managing Agents of the need for a Loan with respect thereto. Lenders may conclusively rely on the Letter of Credit Issuer as to the amount due Administrative Agent by reason of any draft of a Letter of

Credit or due the Letter of Credit Issuer under any Application and Agreement for Letter of Credit. If any payment received by Administrative Agent pursuant to this **Section 2.5(c)** is required to be returned under any of the circumstances described in **Section 14.4**, each Alternate Lender shall pay to Administrative Agent for the account of the Letter of Credit Issuer its Alternate Lender Pro Rata Share of the related Lender Group Percentage thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Borrowing because the conditions set forth in **Section 8.2**, if applicable, and **Section 8.3**, cannot be satisfied or for any other reason, the applicable Borrower Party shall be deemed to have incurred from the Letter of Credit Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender Group's payment to Administrative Agent for the account of the Letter of Credit Issuer pursuant to **Section 2.5(c)(i)** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from the applicable Lenders in such Lender Group in satisfaction of its participation obligation under this **Section 2.5**.

(iv) Until each applicable Lender in each Lender Group funds its Loan or L/C Advance pursuant to this **Section 2.5(c)** to reimburse the Letter of Credit Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender Group's Lender Group Percentage of such amount shall be solely for the account of the Letter of Credit Issuer.

(v) Each Alternate Lender's obligation to make Loans or L/C Advances to reimburse the Letter of Credit Issuer for amounts drawn under Letters of Credit, as contemplated by this **Section 2.5(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including: (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Letter of Credit Issuer, any Credit Party, or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Potential Default or Event of Default; or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Alternate Lender's obligation to make Loans pursuant to this **Section 2.5(c)** is subject to the conditions set forth in **Section 8.2**, if applicable, and **Section 8.3** (other than delivery of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligations of any Credit Party to reimburse the Letter of Credit Issuer for the amount of any payment made by the Letter of Credit Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Alternate Lender fails to make available to Administrative Agent for the account of the Letter of Credit Issuer any amount required to be

paid by such Lender pursuant to the foregoing provisions of this **Section 2.5(c)** by the time specified in **Section 2.5(c)(ii)**, the Letter of Credit Issuer shall be entitled to recover from such Alternate Lender (acting through Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Letter of Credit Issuer at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the Letter of Credit Issuer submitted to any Alternate Lender (through Administrative Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the Letter of Credit Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with **Section 2.5(c)**, if Administrative Agent receives for the account of the Letter of Credit Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of cash collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Lender its Pro Rata Share thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of the Letter of Credit Issuer pursuant to **Section 2.5(c)(i)** is required to be returned under any of the circumstances described in **Section 14.4** (including pursuant to any settlement entered into by the Letter of Credit Issuer in its discretion), each Alternate Lender shall, and each Conduit Lender may (and if a Conduit Lender does not, the Alternate Lenders in its Lender Group shall), pay to Administrative Agent for the account of the Letter of Credit Issuer its Pro Rata Share thereof on demand of Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

(e) Obligations Absolute. The obligations of the applicable Borrower Party to reimburse the Letter of Credit Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Credit Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Credit Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that any Borrower Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary

or any such transferee may be acting), the Letter of Credit Issuer or any other Person, whether in connection with this Credit Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the Letter of Credit Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Letter of Credit Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower Party.

The applicable Borrower Party shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower Party's instructions or other irregularity, such Borrower Party will immediately notify the Letter of Credit Issuer. The applicable Borrower Party shall be conclusively deemed to have waived any such claim against the Letter of Credit Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of Letter of Credit Issuer.** Each Lender and each Borrower Party agree that, in paying any drawing under a Letter of Credit, the Letter of Credit Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Letter of Credit Issuer, any Agent-Related Person nor any of the respective correspondents, participants or assignees of the Letter of Credit Issuer shall be liable to any Lender for: (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or related Request for Letter of Credit. Each Borrower Party hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude any Borrower Party's pursuing such rights and remedies as it may have against the

beneficiary or transferee at law or under any other agreement. None of the Letter of Credit Issuer, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of the Letter of Credit Issuer, shall be liable or responsible for any of the matters described in **clauses (i) through (v) of Section 2.5(e)**; *provided, however*, that anything in such clauses to the contrary notwithstanding, a Borrower Party may have a claim against the Letter of Credit Issuer, and the Letter of Credit Issuer may be liable to such Borrower Party, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower Party which such Borrower Party proves were caused by the Letter of Credit Issuer's willful misconduct or gross negligence or the Letter of Credit Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the Letter of Credit Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Letter of Credit Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) **Cash Collateral.** Upon the request of Administrative Agent if: (A) the Letter of Credit Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing; or (B) an Event of Default has occurred and is continuing; or (C) as of the Letter of Credit Expiration Date, any Letter of Credit for any reason remains outstanding and partially or wholly undrawn, then the Borrower Parties shall immediately Cash Collateralize the then-outstanding amount of the Letter of Credit Liability (determined as of the date of the such Event of Default or Letter of Credit Expiration Date, as the case may be).

(i) In addition, if Administrative Agent notifies the Borrower Parties at any time that the outstanding amount of the Letter of Credit Liability at such time exceeds 100% of the Letter of Credit Sublimit then in effect, then the Credit Parties shall Cash Collateralize the Letter of Credit Liability in an amount equal to the amount by which the outstanding amount of the Letter of Credit Liability exceeds the Letter of Credit Sublimit: (A) promptly upon receipt of such notice (but in no event later than two (2) Business Days thereafter), with proceeds from a Borrowing hereunder, up to the Available Loan Amount at such time; and (B) within fifteen (15) Business Days of receipt of such notice to the extent that it is necessary for the Credit Parties to issue Call Notices to fund such required payment (after giving effect to the preceding **clause (A)**) (and the Credit Parties shall issue such Call Notices during such time, and shall prepay such Loans or Cash Collateralize the Letter of Credit Liability, or both, immediately after the Capital Contributions relating to such Call Notices are received).

(ii) **Sections 2.1(d)(ii) and 3.6** set forth certain additional requirements to deliver cash collateral hereunder. For purposes of this **Section 2.5**, and such other Sections, "**Cash Collateralize**" means to pledge and deposit with or deliver

to Administrative Agent, for the benefit of the Letter of Credit Issuer and the Lenders, as collateral for the Letter of Credit Liability, cash or deposit account balances in Dollars pursuant to documentation in form and substance satisfactory to Administrative Agent and the Letter of Credit Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. Each Borrower Party hereby grants to Administrative Agent, for the benefit of the Letter of Credit Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash Collateral shall be maintained in blocked, interest bearing deposit accounts at Bank of America (provided that: (x) any interest accrued on any such deposit account shall be payable to Borrower only upon the full and final payment of the Obligations; and (y) upon the occurrence of an Event of Default, any such interest accrued to the date thereof shall be applied as additional compensation to Lenders).

(h) **Conflict with Issuer Documents.** In the event of any conflict between the terms hereof and the terms of any Issuer Documents, the terms hereof shall control.

(i) **Applicability of ISP98.** Unless otherwise expressly agreed by the Letter of Credit Issuer and a Borrower Party when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

2.6. **Payment of Borrower Guaranty.** In consideration of Lenders' agreement to advance funds to a Qualified Borrower, to cause Letters of Credit to be issued for the account of a Qualified Borrower, and to accept Borrower Guaranties in support thereof, Borrower hereby authorizes, empowers, and directs the Administrative Agent, for the benefit of itself and the other Secured Parties, within the limits of the Available Loan Amount, to disburse directly to Lenders, with notice to Borrower, in immediately available funds, an amount equal to the amount due and owing under any Qualified Borrower Note or any Borrower Guaranty, together with all interest, reasonable costs and expenses and fees due to Lenders pursuant thereto, as a Borrowing hereunder, in the event Administrative Agent shall have not received payment of such Obligation when due. Administrative Agent will promptly notify Borrower of any disbursement made to Lenders pursuant to the terms hereof, *provided that* the failure to give such notice shall not affect the validity of the disbursement. Any such disbursement made by Administrative Agent to Lenders shall be deemed to be a Loan, and Borrower shall be deemed to have given to Administrative Agent, in accordance with the terms and conditions of **Section 2.3(a)**, a Loan Notice with respect thereto. Administrative Agent may conclusively rely on Lenders as to the amount of any such Obligation due to Lenders, absent manifest error.

2.7. **Use of Proceeds and Letters of Credit.** The proceeds of the Loans and the Letters of Credit shall be used solely for the purposes permitted under the Operating Agreement, the Stockholders Agreement and the Constituent Documents of the Qualified Borrowers. None of the Lenders, Agents or Administrative Agent shall have any liability, obligation, or responsibility whatsoever with respect to any Borrower Party's use of the proceeds of the Loans or the Letters of Credit, and none of the Lenders, Agents or Administrative Agent shall be obligated to determine whether or not any Borrower Party's use of the proceeds of the Loans or the Letters of Credit are for purposes permitted under the Operating Agreement, the Stockholders

Agreement or such Constituent Documents. Nothing, including, without limitation, any Borrowing, or any issuance of any Letter of Credit, or acceptance of any other document or instrument, shall be construed as a representation or warranty, express or implied, to any party by any Agent, Lender or the Administrative Agent as to whether any investment by Borrower or any Qualified Borrower is permitted by the terms of the Operating Agreement, the Stockholders Agreement or the Constituent Documents of any Qualified Borrower.

2.8. **Administrative Agent and Arranger Fees.** Borrower shall pay to Administrative Agent and Arranger fees in consideration of the arrangement of the Commitments and administration of this Credit Agreement, which fees shall be payable in amounts and on the dates agreed to between Borrower and Administrative Agent in the Fee Letter.

2.9. **Unused Facility Fee.** In addition to the payments provided for in **Section 3** hereof, Borrower shall pay to Administrative Agent, for the account of each Lender Group, in accordance with its Lender Group Percentage, an unused facility fee on the daily amount of the Liquidity Commitment minus the daily amount of the Principal Obligation at a rate per annum provided in the Fee Letter, payable in arrears on each Settlement Date. Borrower and Lenders acknowledge and agree that unused fees payable hereunder are *bona fide* unused fees and are intended as reasonable compensation to Lenders for committing to make funds available to Borrower as described herein and for no other purposes.

2.10. **Letter of Credit Fees.** The Borrower Parties shall pay letter of credit fees (the “**Letter of Credit Fees**”) to the Letter of Credit Issuer and Administrative Agent in the amounts and on the dates as set forth in the Fee Letter.

2.11. **Computation of Interest and Fees.** All computations of interest for Loans calculated by reference to the Base Rate, when the Base Rate is determined by Bank of America’s “*prime rate*” shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan from and including the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to **Section 3.4**, bear interest for one day.

2.12. **Increase in the Facility Amount.**

(a) **Additional Increase.** Administrative Agent shall, at the request of Borrower (not more than three (3) times), increase the Facility Amount to the amount requested by Borrower by increasing the Commitment of the Alternate Lenders (each, an “**Increasing Lender**”), subject to the following conditions:

(i) Borrower shall have delivered to Administrative Agent the Facility Increase Request at least three (3) Business Days prior to the date of increase;

(ii) After giving effect to the increase in the Commitment of each Increasing Lender, the aggregate amount of Alternate Lenders' Commitments will not exceed the Maximum Commitment;

(iii) Each increase in the aggregate amount of Alternate Lenders' Commitments shall be in a minimum amount of \$50,000,000;

(iv) No Event of Default or Potential Default has occurred and is continuing or would result from such increase in the Alternate Lenders' Commitments; and

(v) Borrower shall have paid the applicable fees in accordance with the applicable Fee Letter on or prior to the date of increase.

(b) **Consent of Alternate Lenders.** Subject to the satisfaction of the conditions for such an increase in this **Section 2.12**, each Alternate Lender agrees to increase its Commitments pro rata in the event of an increase of the Facility Amount pursuant to this **Section 2.12**.

(c) **Amendments.** If Administrative Agent deems it advisable in its sole discretion, Borrowers and each Lender agree to execute an amendment to this Credit Agreement, in form and substance reasonably acceptable to Administrative Agent and Borrower, to document an increase in the Facility Amount pursuant to this **Section 2.12**.

3. PAYMENT OF OBLIGATIONS

3.1. **Notes.** The Loans to be made by Lenders to Borrower hereunder shall be evidenced by promissory notes of Borrower. Each Note shall: (a) be in the amount of the applicable aggregate Commitments of the applicable Lender Group; (b) be payable to the order of the Managing Agent for such Lender Group; (c) bear interest in accordance with the provisions hereof; (d) be in the form of **Exhibit B-1** attached hereto (with blanks appropriately completed in conformity herewith); and (e) be made by the Borrower. The Loans to be made by Lenders to Qualified Borrowers hereunder shall be evidenced by a Qualified Borrower Promissory Note of each such Qualified Borrower. Each Qualified Borrower Promissory Note shall: (a) be in the amount of the applicable aggregate Loans of the applicable Lender Group to be advanced to such Qualified Borrower; (b) be payable to the order of the Managing Agent for such Lender Group; (c) bear interest in accordance with the provisions hereof; (d) be in the form of **Exhibit B-2** attached hereto (with blanks appropriately completed in conformity herewith); and (e) be duly executed by such Qualified Borrower. Each Borrower Party agrees, from time to time, upon the request of Administrative Agent or any applicable Managing Agent, to reissue new Notes, in accordance with the terms and in the form heretofore provided, to any Lender and any Assignee of such Lender in accordance with **Section 14.12(b)** hereof, in renewal of and substitution for the Note previously issued by such Borrower Party to the Managing Agent for the affected Lender Group, and such previously issued Notes shall be returned to the applicable Borrower Party marked "cancelled". Each Managing Agent shall, and is hereby authorized to, make a notation on the schedule attached to the Note of the date and the amount of each Loan and the date and amount of each payment of principal thereon, and prior to any transfer of the

Note, such Managing Agent shall endorse the outstanding principal amount of the Note on the schedule attached thereto; *provided, however*, that failure to make such notation shall not limit or otherwise affect the obligations of any Borrower Party hereunder or under such Note to pay when due the aggregate unpaid principal amount of Obligations owing to the applicable Lender Group by such Borrower Party under this Credit Agreement, and to pay interest on the aggregate unpaid principal amount of Obligations (as so adjusted) and to pay any other amount owing hereunder or thereunder, in each case as provided herein.

3.2. **Payment of Obligations.** The principal amount of the Obligations outstanding on the Maturity Date, together with all accrued but unpaid interest thereon, shall be due and payable on the Maturity Date.

3.3. **Payment of Interest.**

(a) **Interest.** Interest on each Borrowing and any portion thereof shall commence to accrue in accordance with the terms of this Credit Agreement and the other Loan Documents as of the date of the disbursal or wire transfer of such Borrowing by Administrative Agent, consistent with the provisions of **Section 2.4** and **2.11**, notwithstanding whether any Borrower Party received the benefit of such Borrowing as of such date and even if such Borrowing is held in escrow pursuant to the terms of any escrow arrangement or agreement. When a Borrowing is disbursed by wire transfer pursuant to instructions received from a Borrower Party, then such Borrowing shall be considered made at the time of the transmission of the wire, in accordance with the Loan Notice, rather than the time of receipt thereof by the receiving bank. With regard to the repayment of the Loans, interest shall continue to accrue on any amount repaid until such time as the repayment has been received in federal or other immediately available funds by Administrative Agent.

(b) **Interest Payment Dates.** Accrued and unpaid interest (i) on the Obligations shall be due and payable in arrears in Dollars on each Settlement Date and on the Maturity Date, (ii) on each other date of any reduction of the Principal Obligation hereunder, and (iii) with respect to any Obligation on which such Borrower Party is in default shall be due and payable at any time and from time to time following such default upon demand by Administrative Agent. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(c) **Direct Disbursement.** If, at any time, Administrative Agent or Letter of Credit Issuer shall not have received on the date due, any payment of interest upon the Loans or any fee described herein, Administrative Agent may direct the disbursement of funds from the Collateral Account to Lenders or Letter of Credit Issuer, in accordance with the terms hereof, to the extent available therein for payment of any such amount. If, at any such time, the amount available in the Collateral Account is not sufficient for the full payment of such amounts due, Administrative Agent may, without prior notice to or the consent of any Borrower Party, within the limits of the Available Loan Amount, disburse to Lenders, in accordance with the terms hereof, in immediately available funds an amount equal to the interest or fee due to Lenders, which disbursement shall be

deemed to be a Loan pursuant to **Section 2.3** hereof, and Borrower shall be deemed to have given to Lenders in accordance with the terms and conditions of **Section 2.3** a Loan Notice with respect thereto.

3.4. **Payments Generally.** (a) All payments of principal of, and interest on, the Obligations under this Credit Agreement by any Borrower Party to or for the account of Lenders, or any of them, shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff by such Borrower Party. Except as otherwise expressly provided herein, all payments by the Borrower Parties hereunder shall be made to Administrative Agent, for the account of the respective Lenders to which such payment is owed, to the Administrative Agent's Account in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. Funds received after 2:00 p.m. shall be treated for all purposes as having been received by Administrative Agent on the first Business Day next following receipt of such funds and any applicable interest or fees shall continue to accrue. Each Lender Group shall be entitled to receive its Lender Group Percentage (or other applicable share as provided herein) of each payment received by Administrative Agent hereunder for the account of Lenders on the Obligations. Each payment received by Administrative Agent hereunder for the account of a Lender Group shall be promptly distributed by Administrative Agent in accordance with the instructions provided by the Managing Agent for such Lender Group. If any payment to be made by any Borrower Party shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) **Borrower Deposits.** The Borrower Parties shall deposit or cause to be deposited into the Administrative Agent's Account:

(i) On each Settlement Date, accrued and unpaid Yield for the applicable Interest Period;

(ii) On the specified Business Day with respect to a reduction of the Principal Obligation under **Section 3.5** or **Section 3.6**, the amount of the reduction, accrued and unpaid Yield thereon to such Business Day and any other Obligations (other than Yield) with respect to such amount;

(iii) On each applicable Business Day determined in accordance with **Section 2.1(d)**, an amount equal to the mandatory principal payment specified therein, accrued and unpaid Yield thereon to such Business Day and any other Obligation (other than Yield) with respect to such amount;

(iv) On each Settlement Date, any Obligations then due and payable other than Yield (without duplication); and

(v) On the Maturity Date, all accrued and unpaid Obligations (including Cash Collateralization of the Letter of Credit Liability that will remain outstanding after the Maturity Date).

(c) **Order of Application.** Upon the receipt by Administrative Agent of any payment with respect to the Obligations, Administrative Agent shall distribute the

amount of such payment or deposit to the Persons, for the purposes and in the order of priority, set forth below:

(i) to Administrative Agent, the Managing Agents, the Administrator, the applicable Lenders and such other Persons as may be entitled to the distribution required by this **clause (i)**, in payment of all costs, expenses, other fees (including Attorney Costs) and Obligations owed to such Persons other than Loans and Yield and other than the Cash Collateralization of the Letter of Credit Liability, *pro rata* based on entitlement;

(ii) to the applicable Managing Agents (on behalf of their related Lenders), *pro rata* based on the Lender Group Percentages of their respective Lender Groups in the Loans, accrued and unpaid Yield on all Portions of Loans for the related Interest Periods; and

(iii) first, to the applicable Managing Agents (on behalf of their related Lenders), *pro rata* based on the Lender Group Percentages of their respective Lender Groups in the Loans, in reduction of the aggregate outstanding Loans, and second, for deposit in the Administrative Agent's Account an amount necessary to Cash Collateralize the Letter of Credit Liability as required pursuant to **Section 2.5**.

3.5. Voluntary Prepayments. Any Borrower Party may, upon notice to Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided* that: (a) such notice must be received by Administrative Agent not later than 11:00 a.m. three (3) Business Days prior to any date of prepayment of Loans; and (b) any prepayment of Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date (which shall be a Business Day) and amount of such prepayment. Administrative Agent will promptly notify each Managing Agent of its receipt of each such notice, and of the amount of such Managing Agent's Lender Group Percentage of such prepayment. If such notice is given by a Borrower Party, such Borrower Party shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to **Section 4** hereof. Each such prepayment shall be applied to the Obligations held by each Lender in accordance with its respective Pro Rata Share.

3.6. Reduction or Early Termination of Commitments. So long as no Loan Notice or Request for Letter of Credit is outstanding, Borrower may terminate the Commitments, or reduce the Facility Amount, by giving prior irrevocable written notice to Administrative Agent of such termination or reduction ten (10) Business Days prior to the effective date of such termination or reduction (which date shall be specified by Borrower in such notice): (a) (i) in the case of complete termination of the Commitments, upon prepayment of all of the outstanding Obligation, including, without limitation, all interest accrued thereon, in accordance with the terms of **Section 3.5**; or (ii) in the case of a reduction of the Facility Amount, upon prepayment of the amount by which the Principal Obligation exceeds the reduced Available Loan Amount

resulting from such reduction, including, without limitation, payment of all interest accrued thereon, in accordance with the terms of **Section 3.5**, *provided, however*, that, except in connection with a termination of the Commitments, the Facility Amount may not be reduced such that, upon such reduction, the Available Loan Amount is less than the aggregate face amount of outstanding Letters of Credit; and (b) in the case of the complete termination of the Commitments, if any Letter of Credit Liability exists, Borrower shall immediately Cash Collateralize the then-outstanding amount of the Letter of Credit Liability, without presentment, demand, protest or any other notice of any kind, all of which are hereby waived. Unless otherwise required by law, upon the full and final payment of the Letter of Credit Liability, or the termination of all outstanding Letter of Credit Liability due to the expiration of all outstanding Letters of Credit prior to draws thereon, Administrative Agent shall return to Borrower or the applicable Qualified Borrower any amounts remaining in such cash collateral account, *provided, however*, that, so long as no Event of Default exists, to the extent individual Letters of Credit expire, Administrative Agent will return to Borrower or the applicable Qualified Borrower the corresponding amount of the expired Letter of Credit Liability. Notwithstanding the foregoing: (1) after any reduction of the Facility Amount by Borrower, the next subsequent reduction shall not occur until at least one month thereafter; (2) any reduction of the Facility Amount shall be in an amount equal to or greater than \$5,000,000; and (3) in no event shall a reduction by Borrower reduce the Facility Amount to \$10,000,000 or less (except for a termination of all the Commitments). Promptly after receipt of any notice of reduction or termination, Administrative Agent shall notify each Lender of the same. Any reduction of the Facility Amount shall reduce the Commitments of the Alternate Lenders on a *pro rata* basis.

3.7. **Lending Office.** Each Lender may (a) designate its principal office or a branch, subsidiary or Affiliate of such Lender as its Lending Office (and the office to whose accounts payments are to be credited) for any Loan and (b) change its Lending Office from time to time by notice to Administrative Agent and Borrower. In such event, the Managing Agent for such Lender shall continue to hold the Note, if any, evidencing its loans for the benefit and account of such branch, subsidiary or Affiliate. Each Lender shall be entitled to fund all or any portion of its Commitment in any manner it deems appropriate, consistent with the provisions of **Section 2.4**.

4. CHANGE IN CIRCUMSTANCES.

4.1. Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Borrower Party hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, *provided* that if any Borrower Party shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then: (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this **Section 4.1**) each Tax Indemnified Party receives an amount equal to the sum it would have received had no such deductions been made; (ii) the applicable Borrower Party shall make such deductions; and (iii) such Borrower Party shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) **Payment of Other Taxes by Borrower.** Without limiting the provisions of **subsection (a)** above, each Borrower Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) **Indemnification by Borrower Parties.** Each Borrower Party shall indemnify each Tax Indemnified Party, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this **Section 4.1**) paid by such Tax Indemnified Party and penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the applicable Borrower Party by a Tax Indemnified Party (with a copy to Administrative Agent), on its own behalf or on behalf of a Tax Indemnified Party, shall be conclusive absent manifest error.

(d) **Evidence of Payments.** As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower Party to a Governmental Authority, such Borrower Party shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) **Gross Up.** If any Borrower Party shall be required to deduct or pay any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Secured Party, such Borrower Party shall also pay to Administrative Agent or to such Secured Party, as the case may be, at the time interest is paid, such additional amount that Administrative Agent or such Secured Party specifies is necessary to preserve the after-tax yield (after factoring in all taxes, including taxes imposed on or measured by net income) that Administrative Agent or such Secured Party would have received if such Taxes or Other Taxes had not been imposed.

(f) **Selection of Lending Office.** If a Borrower Party is or is likely to be required to pay additional amounts to or for the account of any Lender pursuant to this **Section 4.1**, then such Lender will agree to use reasonable efforts to change the jurisdiction of its Lending Office so as to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the good faith judgment of such Lender, is not otherwise materially disadvantageous to such Lender.

(g) **Treatment of Certain Refunds.** If any Tax Indemnified Party determines, in its reasonable discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower Parties or with respect to which any Borrower Party has paid additional amounts pursuant to this **Section 4.1**, it shall pay to such Borrower Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower Party under this **Section 4.1** with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of such Tax Indemnified Party, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that each Borrower Party, upon the request of such Tax Indemnified Party, agrees to repay the amount paid over to such Borrower Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to such Tax Indemnified Party in the event such Tax Indemnified Party is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require any Tax Indemnified Party to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower Parties or any other Person.

4.2. **Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its Lending Office to make, maintain, finance or fund Loans or other Obligations, or to determine or charge interest rates based upon the LIBOR Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or to determine or charge interest rates based upon the LIBOR Rate, then, on notice thereof by such Lender to Borrower Parties through Administrative Agent, any obligation of such Lender to make or continue Loans or to convert Portions of Loans accruing Yield calculated by reference to the LIBOR Rate to Portions of Loans calculated by return to the Base Rate shall be suspended until such Lender notifies Administrative Agent and Borrower Parties that the circumstances giving rise to such determination no longer exist. Upon the prepayment of any such Loans, each Borrower Party shall also pay accrued interest on the amount so prepaid. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

4.3. **Inability to Determine Rates.** If the LIBOR Rate is at any time applicable and if Administrative Agent is unable to obtain on a timely basis the information necessary to determine the LIBOR Rate for any proposed Interest Period, then: (a) Administrative Agent shall forthwith notify the Lenders and each Borrower Party that the LIBOR Rate cannot be determined for such Interest Period; and (b) while such circumstances exist, none of the Managing Agents shall allocate any Portion of Loans with respect to Loans made during such

period, or reallocate any Portion of Loans allocated to any then-existing Interest Period ending during such period, to a Interest Period with respect to which Yield is calculated by reference to the LIBOR Rate. If, with respect to any outstanding Interest Period, a Lender notifies the Administrative Agent that it is unable to obtain matching deposits based upon the London interbank market to fund its purchase or maintenance of such Portion of Loans or that the LIBOR Rate applicable to such Portion of Loans will not adequately reflect the cost to the Person of funding or maintaining such Portion of Loans for such Interest Period, then: (i) Administrative Agent shall forthwith so notify Borrower and the Lenders; and (ii) upon such notice and thereafter while such circumstances exist, the applicable Managing Agent shall not allocate any other Portion of Loans with respect to Loans made by such Lender during such period, or reallocate any Portion of Loans allocated to any Interest Period ending during such period, to an Interest Period with respect to which Yield is calculated by reference to the LIBOR Rate.

4.4. Increased Cost and Capital Adequacy.

(a) **Change in Law: Increased Cost.** If any Secured Party determines that as a result of the introduction of or any change in or in the interpretation of any Law, or such Secured Party's compliance therewith, there shall be any increase in the cost to such Secured Party of agreeing to make or making, funding or maintaining Loans or (as the case may be) issuing or participating in Letters of Credit (collectively, the "**Covered Matters**"), or its obligation to advance funds under a Program Support Agreement or otherwise in respect of Covered Matters, or a reduction in the amount received or receivable by such Secured Party in connection with any of the foregoing (excluding for purposes of this **clause (a)** any such increased costs or reduction in amount resulting from: (i) Taxes or Other Taxes (as to which **Section 4.1** shall govern); (ii) changes in the basis of taxation of overall net income or overall gross income by the United States or any foreign jurisdiction or any political subdivision of either thereof under the Laws of which such Secured Party is organized or has its Lending Office; and (iii) reserve requirements utilized in the determination of the LIBOR Rate), then from time to time upon demand of such Secured Party (with a copy of such demand to the Administrative Agent), the Borrower Parties shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such increased cost or reduction: (A) promptly on demand, to the extent that funds are available in the Collateral Account or any other account maintained by Borrower; and (B) otherwise, to the extent that it is necessary for Call Notices to be issued to fund such required payment, within fifteen (15) Business Days after demand (but in any event, the Credit Parties shall issue such Call Notices and shall make such payment immediately after the related Capital Contributions are received).

(b) **Change in Law: Capital Adequacy.** If any Secured Party determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, or compliance by such Secured Party (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Secured Party or any corporation controlling such Secured Party as a consequence of Covered Matters or its obligation to advance funds under a Program Support Agreement or otherwise in respect of Covered Matters (taking into consideration its policies with respect to capital adequacy and such Secured Party's desired return on capital), then from

time to time upon demand of such Secured Party (with a copy of such demand to Administrative Agent), the applicable Borrower Parties shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such reduction; *provided, however*, that such amounts shall not be duplicative of any amounts paid by such Borrower Party in the preceding **clause (a)**: (A) promptly on demand, to the extent that funds are available in the Collateral Account or any other account maintained by such Borrower Party; and (B) otherwise, to the extent that it is necessary for Call Notices to be issued to fund such required payment, within fifteen (15) Business Days after demand (but in any event, the Credit Parties shall issue such Call Notices and shall make such payment after the related Capital Contributions are received).

4.5. Funding Losses. Upon demand of any Lender (with a copy to Administrative Agent) from time to time, the Borrower Parties shall promptly pay Administrative Agent for the account of such Lender, such amount or amounts as shall compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by such Lender (as determined by the applicable Managing Agent) as a result of (i) any reduction of any Portion of Loans other than on a date for which timely notice thereof was provided in accordance with **Section 3.5** or (ii) any failure by a Borrower Party (for a reason other than the failure of such Lender to make a Loan) to pay, prepay or borrow any Loan on the date or in the amount notified by such Borrower Party, or (iii) any failure by any Borrower Party to make payment on any drawing under any Letter of Credit (or interest due thereon) on its scheduled due date, and, in the case of an event described in **clause (i)** or **(ii)** to include: (a) an amount equal to any loss or expense suffered by the applicable Lender during the period from the date of receipt of such repayment to the applicable Settlement Date (or if in respect of a reduction on a Settlement Date but without the requisite notice required by **Section 3.5**, to the maturity date of such Commercial Paper (or other financing source)); and (b) net of the income, if any, actually received by the recipient of such reduction from investing the proceeds of such reduction of such Portion of Loans.

4.6. Matters Applicable to all Requests for Compensation.

(a) **Determination of Amount.** A certificate of Administrative Agent or any Secured Party provided to Borrower claiming compensation under this **Section 4** and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, Administrative Agent or such Secured Party may use any reasonable averaging and attribution methods.

(b) **No Duplication.** Any amount payable by the Borrower on account of **Section 4.1, 4.4, or 4.5** shall not be duplicative of: (i) any amount paid under any other such sections, or (ii) any amounts included in the calculation of the LIBOR Rate. Notwithstanding anything to the contrary set forth in this **Section 4**, Borrower Parties shall be required to compensate the Lenders for amounts payable pursuant to **Sections 4.1, 4.4 and 4.5** only to the extent Lenders are holding comparable borrowers liable for such amounts.

(c) **Replacement of Lenders.** If any Lender requests compensation under **Section 4.4**, or if any Borrower Party is required to pay any additional amount to any

Lender or any Governmental Authority for the account of any Lender pursuant to **Section 4.1**, Borrower may replace such Lender in accordance with **Section 14.14**.

(d) **Refund.** Any amount determined to be paid by the Borrower in error pursuant to this **Section 4** shall be, if no Event of Default has occurred and is continuing, promptly refunded to the Borrower, or applied to amounts owing hereunder, as the Borrower may elect.

(e) **Survival.** All of the Borrower Parties' obligations under this **Section 4** shall survive the termination of the Commitments and payment in full of all other Obligations hereunder.

4.7. **Prohibited Event.** In the event a Lender notifies the Administrative Agent that, subsequent to the Closing Date, such Lender or any of its Affiliates: (i) has become a fiduciary with respect to any ERISA Investor in connection with its investment in the Borrower, the Guarantor, the Pledgor or this transaction; or (ii) has acquired any discretionary authority or control with respect to any ERISA Investor's investment in any Credit Party, or renders any investment advice (within the meaning of 29 C.F.R. §2510.3-21(c)) with respect to such investment, the parties hereby agree that the event described in **clause (i) or (ii)** above (the "**Prohibited Event**") shall be deemed to have caused a prohibited transaction under **Section 406(a)** of ERISA or **Section 4975(c)(1)(A), (B), (C) or (D)** of the Code with respect to the transactions described in this Credit Agreement, and the parties to this Credit Agreement shall cooperate with each other to correct such prohibited transaction in accordance with **Section 4975(f)(5)** of the Code. NOTWITHSTANDING ANYTHING IN THIS CREDIT AGREEMENT TO THE CONTRARY, any such correction shall prevent the Lender from receiving any direct or indirect fees, loan repayments, or any other benefits from such ERISA Investor. If the Administrative Agent determines at any time in its reasonable discretion that any of the corrections described herein are insufficient to correct the prohibited transaction in accordance with **Section 4975(f)(5)** of the Internal Revenue Code, then the parties shall also cooperate to replace such affected Lender.

5. SECURITY

5.1. Liens and Security Interest.

(a) **Capital Commitments and Capital Calls.** To secure performance by the Borrower Parties of the payment of each Note and the Obligations: (i) each of Borrower and Managing Member shall grant to Administrative Agent, for the benefit of each of the Secured Parties, an exclusive, perfected, first priority security interest and Lien in and to the Collateral Account pursuant to the Account Assignment; (ii) Borrower and Managing Member, to the extent of their respective interests therein, shall grant to Administrative Agent, for the benefit of Secured Parties, an exclusive, perfected, first priority security interest and Lien in and to the Capital Calls, Capital Commitments, Capital Contributions and their rights under the Operating Agreement, including, without limitation, any rights to make Capital Calls, receive payment of Capital Contributions and enforce the payment thereof pursuant to the Borrower and Managing Member Security Agreement and (iii) pursuant to the Capital Contributions Pledge Agreement, the Pledgor shall grant to

Administrative Agent, for the benefit of each Secured Party, an exclusive, perfected, first priority security interest and Lien in all of the collateral described therein, including the Capital Calls, Capital Commitments, Capital Contributions and, without limitation, any rights to make Capital Calls, receive payment of Capital Contributions and enforce the payment thereof with respect to the Stockholders pursuant to the Stockholders Agreement (the collateral in *clauses (i) through (iii)* of this **Section 5.1(a)** being, collectively, the “**Collateral**”); and (v) Borrower, Managing Member and Pledgor shall deliver to Administrative Agent, or shall otherwise consent to the filing of, financing statements and other documents satisfactory to Administrative Agent. Administrative Agent acknowledges that the collateral for the Obligations does not include a security interest in any Equity Interest.

(b) **Investor Letters.** Each Investor shall execute, in favor of Administrative Agent for the benefit of Secured Parties, an agreement in substantially the form attached hereto as **Exhibit I** (an “**Investor Letter**”).

5.2. **Collateral Account; Capital Calls.**

(a) **Collateral Account.** In order to secure further the payment and performance of the Obligations and to effect and facilitate Secured Parties’ right of offset: (i) the Credit Parties hereby irrevocably appoints Administrative Agent as subscription agent and the sole party entitled in the name of the applicable Credit Party upon the occurrence and during the continuance of an Event of Default, to make any Capital Calls upon the Investors pursuant to the terms of the Operating Agreement and/or the Stockholders Agreement, as applicable, and shall require that all Investors wire-transfer to Bank of America, N.A., ABA #026-009-593, for further credit to Account No. 1233060441, reference “**Acadia Strategic Opportunity Fund III LLC Collateral Account**” (the “**Collateral Account**”), all monies or sums paid or to be paid by any Investor to the capital of any Credit Party as Capital Contributions as and when Capital Contributions are called pursuant to the Call Notices. In addition, each Credit Party shall, upon receipt, deposit in the applicable Collateral Account described above, any payments and monies that such Credit Party receives directly from its Investors as Capital Contributions.

(b) **No Duty.** Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that neither Administrative Agent, Letter of Credit Issuer, nor any other Secured Party undertakes any duties, responsibilities, or liabilities with respect to Capital Calls. None of them shall be required to refer to the Constituent Documents of any Credit Party or take any other action with respect to any other matter which might arise in connection with such Constituent Documents, the Operating Agreement, the Stockholders Agreement or any Capital Call. None of them shall have any duty to determine or inquire into any happening or occurrence or any performance or failure of performance of any Credit Party or of any Investor. None of them has any duty to inquire into the use, purpose, or reasons for the making of any Capital Call or with respect to the investment or the use of the proceeds thereof.

(c) **Capital Calls.** In order that Secured Parties may monitor the Collateral and the Capital Commitments, no Credit Party shall issue any Call Notice or otherwise request, notify, or demand that any Investor make any Capital Contribution, without delivering to Administrative Agent (which delivery may be via facsimile) simultaneously with delivery of the Call Notices to any Investors (“**Call Notice Date**”), copies of the Call Notice for each Investor from whom a Capital Contribution is being sought. Concurrently with the delivery of any Call Notice, the Borrower shall deliver to Administrative Agent a Borrowing Base Certificate showing no Implicit Borrowing Base Deficit would exist at such time after application of the subject Capital Contributions in accordance with the terms of the Call Notice.

(d) **Use of Account; Capital Calls by Administrative Agent.** Borrower may request that Administrative Agent withdraw funds from the Collateral Account at any time or from time to time and disburse such funds as Borrower may direct, so long as at the time of such withdrawal or disbursement and after giving effect thereto: (i) there does not exist an Event of Default or Potential Default; and (ii) the Principal Obligation does not exceed the Available Loan Amount (unless, in the latter case), Borrower has directed that such disbursement be paid to Administrative Agent to repay such excess) and any request by Borrower for withdrawal from the Collateral Account shall be deemed a representation and warranty that the conditions set forth in the foregoing **clauses (i), (ii) and (iii)** have been satisfied. The Credit Parties hereby irrevocably authorize and direct the Secured Parties, acting through Administrative Agent, to withdraw from time to time funds from the Collateral Account for application to amounts not paid when due (after the passage of any applicable grace period) to the Secured Parties or any of them hereunder, under any Application and Agreement for Letter of Credit, under any Letter of Credit or under the Notes to the extent provided herein. Administrative Agent, on behalf of the Secured Parties, is hereby authorized, in the name of the Secured Parties or the name of any Credit Party, at any time or from time to time upon the occurrence and while an Event of Default exists, to notify any or all parties obligated to any Credit Party with respect to the Capital Commitments to make all payments due or to become due thereon directly to Administrative Agent on behalf of the Secured Parties, at a different account number, or to initiate one or more Capital Call Notices in order to pay the Obligations. With or without such general notification, when an Event of Default exists, Administrative Agent, on behalf of Secured Parties: (i) may make Capital Calls in the name of any Credit Party; (ii) may take or bring in any Credit Party’s name or (or that of the Secured Parties) all steps, actions, suits, or proceedings deemed by Administrative Agent necessary or desirable to effect possession or collection of Capital Commitments; (iii) may complete any contract or agreement of any Credit Party in any way related to any of the Capital Commitments; (iv) may make allowances or adjustments related to the Capital Commitments; (v) may compromise any claims related to the Capital Commitments; (vi) may issue credit in its own name or the name of any Credit Party; or (vii) may exercise any right, privilege, power, or remedy provided to any Credit Party under the Constituent Documents of any Credit Party, the Operating Agreement, or the Stockholders Agreement relating to the right to call for Capital Contributions and to receive Capital Contributions. Regardless of any provision hereof, in the absence of gross negligence or willful misconduct by Administrative Agent or Secured Parties, none of Administrative Agent or Secured Parties shall ever be liable for failure to collect or for

failure to exercise diligence in the collection, possession, or any transaction concerning, all or part of the Capital Call Notices, Capital Commitments, or any Capital Contributions, or sums due or paid thereon, nor shall they be under any obligation whatsoever to anyone by virtue of the security interests and Liens relating to the Capital Call Notices, Capital Commitments or any Capital Contributions. Administrative Agent shall give Borrower prompt notice of any action taken pursuant to this **Section 5.2(d)**, but failure to give such notice shall not affect the validity of such action or give rise to any defense in favor of any Credit Party with respect to such action.

(e) **Event of Default.** During the existence and continuance of an Event of Default, issuance by Administrative Agent on behalf of Secured Parties of a receipt to any Person obligated to pay any Capital Contribution to any Credit Party shall be a full and complete release, discharge, and acquittance to such Person to the extent of any amount so paid to Administrative Agent for the benefit of Secured Parties, so long as such amount shall not be invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person under any bankruptcy act or code, state or federal law, common law or equitable doctrine. Administrative Agent, on behalf of the Secured Parties, is hereby authorized and empowered, during the existence of and continuance of an Event of Default, on behalf of any Credit Party, to endorse the name of any Credit Party upon any check, draft, instrument, receipt, instruction, or other document, agreement or item, including, but not limited to, all items evidencing payment of a Capital Contribution of any Person to any Credit Party coming into Administrative Agent's or any Lender's possession, and to receive and apply the proceeds therefrom in accordance with the terms hereof. Administrative Agent on behalf of Secured Parties is hereby granted an irrevocable power of attorney, which is coupled with an interest, to execute all checks, drafts, receipts, instruments, instructions, or other documents, agreements, or items on behalf of any Credit Party, either before or after demand of payment on the Obligations but only during the existence and continuance of an Event of Default, as shall be deemed by Administrative Agent to be necessary or advisable, in the sole discretion, reasonably exercised, of Administrative Agent, to preserve the security interests and Liens in the Capital Commitments or to secure the repayment of the Obligations, and neither Administrative Agent nor Secured Parties shall incur any liability, in the absence of gross negligence or willful misconduct, in connection with or arising from its exercise of such power of attorney. The application by Secured Parties of such funds shall, unless Administrative Agent shall agree otherwise in writing, be the same as set forth in **Section 3.4**.

(f) **No Representations.** Neither Administrative Agent nor Secured Parties shall be deemed to make at any time any representation or warranty as to the validity of any Call Notice nor shall Administrative Agent or the Secured Parties be accountable for any Credit Party's use of the proceeds of any Capital Call Notice.

5.3. **Agreement to Deliver Additional Collateral Documents.** Each Credit Party shall deliver such security agreements, financing statements, assignments, and other collateral documents (all of which shall be deemed part of the "**Collateral Documents**"), in form and substance reasonably satisfactory to Administrative Agent, as Administrative Agent acting on behalf of the Secured Parties may reasonably request from time to time for the purpose of

granting to, or maintaining or perfecting in favor of the Secured Parties, first and exclusive security interests in any of the Capital Call Notices and Capital Commitments, together with other assurances of the enforceability and priority of the Secured Parties' Liens and assurances of due recording and documentation of the Collateral Documents or copies thereof, as Administrative Agent may reasonably require to avoid material impairment of the liens and security interests granted or purported to be granted pursuant to this **Section 5**.

5.4. Subordination of All Credit Party Claims. As used herein, the term "**Credit Party Claims**" means all debts and liabilities of any Investor to any Credit Party, whether such debts and liabilities now exist or are hereafter incurred or arise, or whether the obligations of such Person thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or liabilities be evidenced by note, contract, open account, or otherwise, and irrespective of the Person or Persons in whose favor such debts or liabilities may, at their inception, have been, or may hereafter be created, or the manner in which they have been or may hereafter be acquired by any Credit Party (including, without limitation, by setoff pursuant to the terms of any applicable agreement). Credit Party Claims shall include without limitation all rights and claims of any Credit Party against an Investor under the Constituent Documents of such Person. At any time stays that the Principal Obligation exceeds the Available Loan Amount, and until the mandatory prepayment pursuant to **Section 2.1(d)** hereof in connection therewith, if any, shall be paid and satisfied in full, or, during the existence and continuation of an Event of Default, no Credit Party shall receive or collect, directly or indirectly any amount upon the Credit Party Claims, other than to obtain funds required to make any mandatory prepayment pursuant to **Section 2.1(d)**.

Any Liens, security interests, judgment liens, charges, or other encumbrances upon an Investor's assets securing payment of Credit Party Claims, including, but not limited to, any liens or security interests on an Investor's Equity Interest, shall be and remain inferior and subordinate in right of payment and of security to any liens, security interests, judgment liens, charges, or other encumbrances upon an Investor's assets securing such Investor's obligations and liabilities to the Secured Parties pursuant to any of the Collateral Documents executed by such Investor, regardless of whether such encumbrances in favor of Borrower or a Qualified Borrower, Managing Member, the Pledgor or the Secured Parties presently exist or are hereafter created or attach. Without the prior written consent of Administrative Agent, no Credit Party shall: (a) exercise or enforce any creditor's, shareholder or partnership right it may have against an Investor; (b) foreclose, repossess, sequester, or otherwise take steps or institute any action or proceedings (judicial or otherwise, including without limitation, the commencement of, or joinder in, any liquidation, bankruptcy, rearrangement, debtor's relief, or insolvency proceeding) to enforce any liens, mortgages, deeds of trust, security interest, collateral rights, judgments or other encumbrances on assets of such Investor held by such Person; or (c) exercise any rights or remedies against an Investor under the Constituent Documents of such Person; *provided that* any action taken by Administrative Agent or the Secured Parties in Borrower's name, or any action taken by Borrower that is required under any Loan Document or to comply with any Loan Document, shall not be a violation of this **Section 5.4**.

6. [RESERVED]

7. ADDITIONAL ALTERNATE LENDER PROVISIONS

7.1. Assignment to Alternate Lenders.

(a) **Assignment Amounts.** At any time on or prior to the Stated Maturity Date, if the related Administrator on behalf of the applicable Conduit Lender so elects, by written notice to Administrative Agent, Borrower and its related Managing Agent, such Conduit Lender hereby assigns effective on the Assignment Date referred to below all or such portions as may be elected by such Conduit Lender of its interest in the Principal Obligation at such time to its Alternate Lenders pursuant to this **Section 7.1**; *provided, however*, that unless such assignment is an assignment of all such Conduit Lender's interest in the Principal Obligation in whole on or after its Conduit Investment Termination Date, no such assignment shall take place pursuant to this **Section 7.1** if an Event of Default described in **Section 12.1(n)** shall then exist; and *provided, further*, that no such assignment shall take place pursuant to this **Section 7.1** at a time when such Conduit Lender is subject to any proceedings under any Debtor Relief Laws. No further documentation or action on the part of such Conduit Lender, the Borrower, or the applicable Alternate Lenders shall be required to exercise the rights set forth in the immediately preceding sentence, other than the giving of the notice by the related Administrator on behalf of such Conduit Lender referred to in such sentence and the delivery by the related Managing Agent of a copy of such notice to each Alternate Lender in the Lender Group (the date of the receipt by Administrative Agent of any such notice being the "**Assignment Date**"). Each Alternate Lender hereby agrees, unconditionally and irrevocably and under all circumstances, without set-off, counterclaim or defense of any kind, to pay the full amount of its Assignment Amount on such Assignment Date to such Conduit Lender in immediately available funds in Dollars based on the assigning Conduit Lender's interest in the Principal Obligation, to an account designated by the related Managing Agent. Upon payment of its Assignment Amount, each such Alternate Lender shall acquire an interest in the Principal Obligation equal to its Alternate Lender Pro Rata Share thereof. Upon any assignment in whole by a Conduit Lender to its Alternate Lenders on or after its Conduit Investment Termination Date as contemplated hereunder, such Conduit Lender shall cease to make any additional Loans hereunder. At all times prior to its Conduit Investment Termination Date, nothing herein shall prevent a Conduit Lender from making a subsequent Loan hereunder, in its sole discretion, following any assignment pursuant to this **Section 7.1** or from making more than one assignment pursuant to this **Section 7.1**.

(b) **Additional Assignment Amounts.** The applicable Borrower Party may pay to Administrative Agent in Dollars, for the account of the related Managing Agent for the benefit of its Conduit Lender, in connection with any assignment by a Conduit Lender to its Alternate Lenders pursuant to this **Section 7.1**, an aggregate amount equal to all Yield to accrue through the end of the current

Interest Period to the extent attributable to the portion of the Loans so assigned to the Alternate Lenders (as determined immediately prior to giving effect to such assignment), plus all Obligations then due, other than the Loans and other than any Yield described above, attributable to such portion of the Loans so assigned. If the applicable Borrower Party does not make payment of such amounts at or prior to the time of assignment by a Conduit Lender to its Alternate Lenders, such amount shall be paid by such Alternate Lenders to the Conduit Lender as additional consideration for the interests assigned to the Alternate Lenders and the amount of the "Loans" hereunder held by such Alternate Lenders shall be increased by an amount equal to the additional amount so paid by such Alternate Lenders.

(c) **Administration of Agreement after Assignment from Conduit Lender to Alternate Lenders following the Conduit Investment Termination Date.** After any assignment in whole by a Conduit Lender to its Alternate Lenders pursuant to this **Section 7.1** at any time on or after its Conduit Investment Termination Date (and the payment of all amounts owing to such Conduit Lender in connection therewith), all rights of the related Administrator and the related Conduit Collateral Agent set forth herein shall be given to the applicable Managing Agent on behalf of its Alternate Lenders instead of such Administrator and Conduit Collateral Agent.

(d) **Payments to Administrative Agent.** After any assignment in whole by a Conduit Lender to its Alternate Lenders pursuant to this **Section 7.1** at any time on or after its Conduit Investment Termination Date, all payments to be made hereunder by a Borrower Party to Administrative Agent for the benefit of such Conduit Lender shall be made to the account specified by the applicable Managing Agent in writing to the Administrative Agent and the applicable Borrower Party.

(e) **Recovery of Loans.** In the event that the aggregate of the Assignment Amounts paid by the Alternate Lenders with respect to any Lender Group pursuant to this **Section 7.1** on any Assignment Date occurring on or after the Conduit Investment Termination Date for the related Conduit Lender is less than the Loans of such Conduit Lender on such Assignment Date, then to the extent that payments or deposits thereafter received and applied by Administrative Agent with respect to such Lender Group under **Section 3.4** in respect of Loans exceed the aggregate of the unrecovered Assignment Amounts and Loans funded by such Alternate Lenders, such excess shall be remitted by Administrative Agent to the related Managing Agent.

7.2. Downgrade of Alternate Lender.

(a) **Downgrades Generally.** If at any time on or prior to the Stated Maturity Date, the short-term debt rating of any Alternate Lender shall be "A-2" or "P-2" from S&P or Moody's, respectively, with negative credit implications, such Alternate Lender, upon request of the related Managing Agent, shall, within thirty

(30) days of such request, assign its rights and obligations hereunder to another financial institution (which institution's short term debt shall be rated at least "A-2" or "P-2" from S&P or Moody's, respectively, and which shall not be so rated with negative credit implications and which is acceptable to such Conduit Lender and such Managing Agent). If the short-term debt rating of such Alternate Lender shall be "A-3" or "P-3", or lower, from S&P or Moody's, respectively (or such rating shall have been withdrawn by S&P or Moody's), such Alternate Lender, upon request of the related Managing Agent, shall, within five (5) Business Days of such request, assign its rights and obligations hereunder to another financial institution (which institution's short-term debt shall be rated at least "A-2" or "P-2", from S&P or Moody's, respectively, and which shall not be so rated with negative credit implications and which is acceptable to such Conduit Lender and such Managing Agent). In either such case, if any such Alternate Lender shall not have assigned its rights and obligations under this Credit Agreement within the applicable time period described above (in either such case, the "**Required Downgrade Assignment Period**"), the Administrator on behalf of such Conduit Lender shall have the right to require such Alternate Lender to pay, in Dollars upon one (1) Business Day's notice at any time after the Required Downgrade Assignment Period (and each such Alternate Lender hereby agrees in such event to pay within such time) to the applicable Managing Agent an amount equal to such Alternate Lender's unused Commitment (without any deduction therefrom for such Alternate Lender's share of the Letter of Credit Liability) (a "**Downgrade Draw**") for deposit by such Managing Agent into an account, in the name of such Managing Agent (a "**Downgrade Collateral Account**"), which shall be in satisfaction of such Alternate Lender's obligations to make Loans and to pay its Assignment Amount upon an assignment from such Conduit Lender in accordance with **Section 7.1**; *provided, however*, that if, during the Required Downgrade Assignment Period, such Alternate Lender delivers a written notice to such Managing Agent of its intent to deliver a direct pay irrevocable letter of credit pursuant to this proviso in lieu of the payment required to fund the Downgrade Draw, then such Alternate Lender will not be required to fund such Downgrade Draw. If any Alternate Lender gives the applicable Managing Agent such notice, then such Alternate Lender shall, within one (1) Business Day after the Required Downgrade Assignment Period, deliver to such Managing Agent a direct pay irrevocable letter of credit in favor of such Managing Agent issued in Dollars, in an amount equal to the unused portion of such Alternate Lender's Commitment (without any deduction therefrom for such Alternate Lender's share of the Letter of Credit Liability), which letter of credit shall be issued through a United States office of a bank or other financial institution: (i) whose short-term debt ratings by S&P and Moody's are at least equal to the ratings assigned by such statistical rating organization to the Commercial Paper; and (ii) that is acceptable to such Conduit Lender and such Managing Agent. Such letter of credit shall provide that such Managing Agent may draw thereon for payment of any Loan or Assignment Amount payable by such Alternate Lender which is not paid hereunder when required, shall expire no earlier than the Stated Maturity Date and shall otherwise be in form and substance acceptable to such Managing

Agent. If on any date the amount on deposit in the Downgrade Collateral Account or the maximum stated amount under any letter of credit so provided is less than the applicable Alternate Lender's share of the unused Commitment, upon one (1) Business Day's notice, such Alternate Lender will pay the amount of such shortfall to the applicable Managing Agent for deposit into the Downgrade Collateral Account or provide a substitute or additional direct pay irrevocable letter of credit to cover such shortfall.

(b) **Application of Funds in Downgrade Collateral Account.** If any Alternate Lender in any Lender Group shall be required pursuant to **subsection (a)** to fund a Downgrade Draw, then the related Managing Agent shall apply the monies in the Downgrade Collateral Account applicable to such Alternate Lender's share of Loans required to be made by the related Alternate Lenders, to any Assignment Amount payable by such Alternate Lender pursuant to **Section 7.1** at the times, in the manner and subject to the conditions precedent set forth in this Credit Agreement. The deposit of monies in such Downgrade Collateral Account by any Alternate Lender shall not constitute a Loan or the payment of any Assignment Amount (and such Alternate Lender shall not be entitled to interest on such monies except as provided below in this **Section 7.2(b)**), unless and until (and then only to the extent that) such monies are used to fund Loans or to pay any Assignment Amount pursuant to this **Section 7.2(b)**. The amount on deposit in such Downgrade Collateral Account shall be invested by the related Managing Agent in investments selected by such Managing Agent in its sole discretion and eligible in accordance with the applicable conduit program documents. Such Managing Agent shall remit to such Alternate Lender, on the last Business Day of each month, the interest income actually received thereon. Unless required to be released as provided below in this subsection, payments or deposits received by such Managing Agent in respect of such Alternate Lender's portion of the Loans shall be deposited in the Downgrade Collateral Account for such Alternate Lender. Amounts on deposit in such Downgrade Collateral Account shall be released to such Alternate Lender (or the stated amount of the letter of credit delivered by such Alternate Lender pursuant to **subsection (a)** above may be reduced) within one (1) Business Day after each Settlement Date following the Maturity Date to the extent that, after giving effect to the distributions made and received by the Lenders on such Settlement Date, the amount on deposit in such Downgrade Collateral Account would exceed the Alternate Lender's Alternate Lender Pro Rata Share (determined as of the day prior to the Maturity Date) of the sum of all Portions of Loans then funded by the related Conduit Lender, *plus* the related Interest Component, *plus* such Alternate Lender's Pro Rata Share of the Letter of Credit Liability. All amounts remaining in such Downgrade Collateral Account shall be released to such Alternate Lender no later than the Business Day immediately following the *earliest* of: (i) the effective date of any replacement of such Alternate Lender or removal of such Alternate Lender as a party to this Credit Agreement; (ii) the date on which such Alternate Lender shall furnish the related Managing Agent with confirmation that such Alternate Lender shall have short term debt ratings of at least "A-2" or "P-2" from S&P and Moody's, respectively,

without negative credit implications; and (iii) the Stated Maturity Date. Nothing in this **Section 7.2** shall affect or diminish in any way any such downgraded Alternate Lender's Commitment to Borrower or its related Conduit Lender or such downgraded Alternate Lender's other obligations and liabilities hereunder and under the other Loan Documents.

(c) **Program Support Agreement Downgrade Provisions.** Notwithstanding the other provisions of this **Section 7.2**, an Alternate Lender shall not be required to make a Downgrade Draw (or provide for the issuance of a letter of credit in lieu thereof) pursuant to **Section 7.2(a)** at a time when such Alternate Lender has a downgrade collateral account (or letter of credit in lieu thereof) established pursuant to the Program Support Agreement to which it is a party in an amount at least equal to its Commitment, and the related Managing Agent may apply monies in such downgrade collateral account in the manner described in **Section 7.2(b)** as if such downgrade collateral account were a Downgrade Collateral Account.

8. CONDITIONS PRECEDENT TO LENDING

8.1. **Obligation of Lenders.** The obligation of each Lender and the Letter of Credit Issuer to make the initial Loan and issue the first Letter of Credit hereunder is subject to Administrative Agent's receipt of the following:

(a) **Credit Agreement.** This Credit Agreement, duly executed and delivered by Borrower, Managing Member, Guarantor and Pledgor;

(b) **Notes.** Notes drawn to the order of each Managing Agent, duly executed and delivered by Borrower and Managing Member;

(c) **Security Agreements.** (i) The Borrower and Managing Member Security Agreement, duly executed and delivered by Borrower and Managing Member and (ii) any other security agreement or related document reasonably requested by Administrative Agent.

(d) **Capital Contributions Pledge Agreement.** (i) The Capital Contributions Pledge Agreement, duly executed and delivered by Pledgor; and (ii) any other similar agreement or related document reasonably requested by Administrative Agent.

(e) **Guaranty of Capital.** The Guaranty of Capital, duly executed and delivered by Guarantor.

(f) **Account Documents.** The Account Assignment, duly executed and delivered by Borrower;

(g) **Financing Statements.**

(i) searches of Uniform Commercial Code ("**UCC**") filings in each jurisdiction where a filing has been or would need to be made in order to perfect the Administrative Agent's security interest on behalf of the Secured Parties in the

Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist, or, if necessary, copies of proper financing statements, if any, filed on or before the date hereof necessary to terminate all security interests and other rights of any Person in any Collateral previously granted; and

(ii) duly authorized UCC financing statements and any amendments thereto, for each appropriate jurisdiction as is necessary, in the Administrative Agent's sole discretion, to perfect the Administrative Agent's security interest on behalf of the Secured Parties in the Collateral;

(h) **Responsible Officer Certificates.** A certificate from a Responsible Officer of each Credit Party, stating that: (i) all of the representations and warranties contained in **Section 9** hereof and the other Loan Documents made by such Credit Party are true and correct in all material respects as of such date (except to the extent of changes in facts or circumstances that have been disclosed to Lenders and do not constitute an Event of Default or, to its knowledge, a Potential Default under this Credit Agreement or any other Loan Document); and (ii) no event has occurred and is continuing, or would result from the Borrowing or issuance of the Letters of Credit, as applicable, which constitutes an Event of Default or, to its knowledge, a Potential Default;

(i) **Borrower's Operating Agreement.** A signed certificate of a Responsible Officer of Borrower who shall certify that attached thereto is a true and complete copy of the Operating Agreement of Borrower as in effect on the date hereof, together with certificates of existence and good standing (or other similar instruments) of Borrower as in effect on the date hereof;

(j) **Managing Member's Formation Documents.** A signed certificate of a Responsible Officer of Managing Member who shall certify that attached thereto are true and complete copies of the Constituent Documents of Managing Member, together with certificates of existence and good standing (or other similar instruments) of Managing Member as in effect on the date hereof;

(k) **Guarantor's Formation Documents.** A signed certificate of a Responsible Officer of Guarantor who shall certify that attached thereto are true and complete copies of the Constituent Documents of Guarantor together with certificates of existence and good standing (or other similar instruments) of Guarantor as in effect on the date hereof;

(l) **Pledgor's Formation Documents.** A signed certificate of a Responsible Officer of Pledgor who shall certify that attached thereto are true and complete copies of the Constituent Documents of Pledgor together with certificates of existence and good standing (or other similar instruments) of Pledgor as in effect on the date hereof;

(m) **Incumbency Certificate.** From each Credit Party, a signed certificate of a Responsible Officer, who shall certify the names of the Persons authorized, on the date

hereof, to sign each of the Loan Documents and the other documents or certificates to be delivered pursuant to the Loan Documents on behalf of such Credit Party, together with the true signatures of each such Person. Administrative Agent may conclusively rely on such certificate until it shall receive a further certificate canceling or amending the prior certificate and submitting the signatures of the Persons named in such further certificate;

(n) **Opinions of Counsel.** (i) A favorable opinion of Robert Masters, Senior Vice President and General Counsel of each Credit Party, as counsel to each Credit Party; (ii) a favorable opinion of Berliner, Corcoran & Rowe, L.L.P., Maryland counsel to the Pledgor; and (iii) an opinion of Mayer Brown LLP, special counsel to the Administrative Agent; each covering such matters relating to the transactions contemplated hereby as reasonably requested by Administrative Agent, and substantially in a form acceptable to Administrative Agent;

(o) **ERISA Certificate.** A certificate from a Responsible Officer of the Credit Parties confirming that the assets of the Credit Parties do not constitute plan assets by reason of the fact that participation in the Credit Parties by “benefit plan investors” is not “significant”, as such terms are defined in the Plan Asset Regulations;

(p) **Investor Documents.** Administrative Agent shall have received from each Included Investor and Designated Investor: (i) a duly executed Investor Letter; (ii) a copy of such Investor’s duly executed signature page to the Operating Agreement or Stockholders Agreement, as applicable; and (iii) to the extent requested by Administrative Agent, true and complete copies of the organizational documents of each Investor, or other documentation in lieu thereof that is acceptable to Administrative Agent in its sole discretion. Administrative Agent may waive one or more of the foregoing requirements with respect to Designated Investors so long as Borrowers have made good faith efforts to obtain the same without success;

(q) **Fees; Costs and Expenses.** Payment of all fees and other amounts due and payable on or prior to the date hereof, including pursuant to the Fee Letter, and, to the extent invoiced, reimbursement or payment of all reasonable expenses required to be reimbursed or paid by Borrower hereunder, including the fees and disbursements invoiced through the date hereof of Administrative Agent’s special counsel, Mayer Brown LLP;

(r) **Advisory Committee Required Vote.** Written evidence in form reasonably satisfactory to the Administrative Agent that the Advisory Committee (as defined in the Operating Agreement) has approved the Loans and Letters of Credit contemplated by this Credit Agreement and the other Loan Documents as contemplated in Section 4.1(b) of the Operating Agreement; and

(s) **Additional Information.** Such other information and documents as may reasonably be required by Administrative Agent and its counsel, including any “*Know Your Customer*” procedures as reasonably requested by the Lenders.

8.2. **Qualified Borrower Loans and Letters of Credit.** The obligation of Lenders to advance a Loan to a Qualified Borrower or to cause the issuance of a Letter of Credit for a Qualified Borrower is subject to the conditions that:

(a) **Qualified Borrower Promissory Note.** Administrative Agent shall have received a duly executed Qualified Borrower Promissory Note or Qualified Borrower Letter of Credit Note, as applicable, complying with the terms and provisions hereof;

(b) **Authorizations of Qualified Borrower.** Administrative Agent shall have received from the Qualified Borrower appropriate evidence of the authorization of the Qualified Borrower approving the execution, delivery and performance of the Qualified Borrower Promissory Note or the Qualified Borrower Letter of Credit Note, duly adopted by Qualified Borrower, as required by law or agreement, and accompanied by a certificate of an authorized Person of such Qualified Borrower stating that such authorizations are true and correct, have not been altered or repealed and are in full force and effect;

(c) **Incumbency Certificate.** Administrative Agent shall have received from the Qualified Borrower a signed certificate of the appropriate Responsible Officer of the Qualified Borrower which shall certify the names of the Persons authorized to sign the Qualified Borrower Promissory Note and the other documents or certificates to be delivered pursuant to the terms hereof by such Qualified Borrower, together with the true signatures of each such Person;

(d) **Borrower Guaranty.** Administrative Agent shall have received from Borrower a duly executed Borrower Guaranty complying with the terms and provisions hereof;

(e) **Opinion of Counsel to Qualified Borrower.** Administrative Agent shall have received a favorable opinion of counsel for the Qualified Borrower, in form and substance satisfactory to Administrative Agent and addressed to Administrative Agent, that: (i) the Qualified Borrower is duly organized and validly existing under the laws of the jurisdiction of its formation; (ii) the subject Qualified Borrower Note has been duly authorized, executed and delivered by the Qualified Borrower; (iii) the subject Qualified Borrower Note is a valid and binding obligation and agreement of such Qualified Borrower, enforceable in accordance with its terms, except to the extent that it may be limited by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally, by general equitable principles; and (iv) neither the execution nor delivery by Qualified Borrower of the subject Qualified Borrower Note, and, if applicable, the Application and Agreement for Letter of Credit, the performance by such Qualified Borrower of its obligations thereunder, nor the compliance by Qualified Borrower with the terms and provisions thereof, will: (A) contravene any provision of the general corporate law, or, if Qualified Borrower is a partnership or another type of entity, the Managing Membership law or applicable law governing such entity, of the jurisdiction of formation of such Qualified Borrower, or the laws, statutes, rules or regulations of the State of New York or the United States of America to which Qualified Borrower is subject, or conflict with, or result in any breach of, any material agreement, mortgage,

indenture, deed of trust or other instrument known to counsel to which Qualified Borrower or its properties may be subject, or result in the creation of any mortgage, lien, pledge or encumbrance in respect of any properties of Qualified Borrower; (B) contravene any judgment, decree, license, order or permit applicable to Qualified Borrower; or (C) violate any provision of the organizational documents of Qualified Borrower. Each Qualified Borrower hereby directs its counsel to prepare and deliver such legal opinion to Administrative Agent for the benefit of Lenders.

8.3. **All Loans and Letters of Credit.** The obligation of Lenders to advance each Borrowing or the Letter of Credit Issuer to issue Letters of Credit hereunder is subject to the conditions that:

(a) **Representations and Warranties.** The representations and warranties set forth in **Section 9** hereof are true and correct in all material respects on and as of the date of the advance of such Borrowing or issuance of such Letter of Credit, with the same force and effect as if made on and as of such date (except to the extent of changes in facts or circumstances that have been disclosed to Lenders and do not constitute an Event of Default or a Potential Default under this Credit Agreement or any other Loan Document);

(b) **No Default.** No event shall have occurred and be continuing, or would result from the Borrowing or the issuance of the Letter of Credit, which constitutes an Event of Default or a Potential Default;

(c) **Loan Notice.** Administrative Agent shall have received a Loan Notice or Request for Letter of Credit;

(d) **Application.** In the case of a Letter of Credit, the Letter of Credit Issuer shall have received an Application and Agreement for Letter of Credit executed by Borrower or the applicable Qualified Borrower and shall have countersigned the same; and

(e) **Material Adverse Effect.** No Material Adverse Effect has occurred and is continuing.

9. REPRESENTATIONS AND WARRANTIES. To induce Lenders to make the Loans and cause the issuance of Letters of Credit hereunder, each Credit Party represents and warrants to Lenders as to itself that:

9.1. **Organization and Good Standing of Borrower.** Borrower is a limited liability company duly organized and validly existing under the laws of the State of Delaware, has the requisite limited liability company power and authority to own its properties and assets and to carry on its business as now conducted, and is qualified to do business in each jurisdiction where the nature of the business conducted or the property owned or leased requires such qualification or where the failure to be so qualified to do business would have a Material Adverse Effect.

9.2. **Organization and Good Standing of Managing Member.** Managing Member is a limited liability company duly organized and validly existing under the laws of the State of Delaware, has the requisite limited liability company power and authority to own its properties

and assets and to carry on its business as now conducted, and is qualified to do business in each jurisdiction where the nature of the business conducted or the property owned or leased requires such qualification or where the failure to be so qualified to do business would have a Material Adverse Effect.

9.3. **Organization and Good Standing of Guarantor.** Guarantor is a limited partnership duly organized and validly existing under the laws of the State of Delaware, has the requisite limited partnership power and authority to own its properties and assets and to carry on its business as now conducted, and is qualified to do business in each jurisdiction where the nature of the business conducted or the property owned or leased requires such qualification or where the failure to be so qualified to do business would have a Material Adverse Effect.

9.4. **Organization and Good Standing of Pledgor.** Pledgor is a corporation incorporated and validly existing under the laws of the State of Maryland, has the requisite corporate power and authority to own its properties and assets and to carry on its business as now conducted, and is qualified to do business in each jurisdiction where the nature of the business conducted or the property owned or leased requires such qualification or where the failure to be so qualified to do business would have a Material Adverse Effect.

9.5. **Authorization and Power.** It has the partnership, limited liability company or corporate power, as applicable, and requisite authority to execute, deliver, and perform its respective obligations under this Credit Agreement, the Notes, and the other Loan Documents to be executed by it. It is duly authorized to, and has taken all partnership, limited liability company and corporate action, as applicable, necessary to authorize it to execute, deliver, and perform its respective obligations under this Credit Agreement, the Notes, and such other Loan Documents and is and will continue to be duly authorized to perform its respective obligations under this Credit Agreement, the Notes, and such other Loan Documents.

9.6. **No Conflicts or Consents.** None of the execution and delivery of this Credit Agreement, the Notes, or the other Loan Documents, the consummation of any of the transactions herein or therein contemplated, or the compliance with the terms and provisions hereof or with the terms and provisions thereof, will contravene or conflict, in any material respect, with any provision of law, statute, or regulation to which it is subject or any judgment, license, order, or permit applicable to it or any indenture, mortgage, deed of trust, or other agreement or instrument to which it is a party or by which it may be bound, or to which it may be subject. No consent, approval, authorization, or order of any court or Governmental Authority or third party is required in connection with the execution and delivery by it of the Loan Documents to which it is a party or to consummate the transactions contemplated hereby or thereby except for those that have been obtained.

9.7. **Enforceable Obligations.** This Credit Agreement, the Notes and the other Loan Documents to which it is a party are the legal and binding obligations of it, enforceable in accordance with their respective terms, subject to Debtor Relief Laws and equitable principles.

9.8. **Priority of Liens.** The Collateral Documents create, as security for the Obligations, valid and enforceable, exclusive, first priority security interests in and Liens on all of the Collateral in which it has any right, title or interest, in favor of Administrative Agent for

the benefit of the Secured Parties, subject to no other Liens, except as enforceability may be limited by Debtor Relief Laws and equitable principles. Such security interests in and Liens on the Collateral in which it has any right, title, or interest shall be superior to and prior to the rights of all third parties in such Collateral, and, other than in connection with any future change in its name, identity or structure, or the location of its chief executive office, no further recordings or filings are or will be required in connection with the creation, perfection or enforcement of such security interests and Liens, other than the filing of continuation statements in accordance with applicable law. Each Lien referred to in this **Section 9.7** is and shall be the sole and exclusive Lien on the Collateral in which it has any right, title or interest.

9.9. **Financial Condition.** Each Borrower Party has delivered to Administrative Agent: (a) the most-recently available copies of the financial statements and reports described in **Section 10.1**; or, with respect to such requirement on the Closing Date, if such statements and reports are not then available (b) a *pro forma* balance sheet as of the Closing Date; in each case certified as true and correct in all material respects by a Responsible Officer of such Borrower Party. Such statements fairly present, in all material respects, the financial condition of such Borrower Party as of the applicable date of delivery, and have been prepared in accordance with GAAP, except as provided therein.

9.10. **Full Disclosure.** There is no material fact that any Credit Party has not disclosed to Administrative Agent in writing which would reasonably be expected to result in a Material Adverse Effect. No information heretofore furnished by any Credit Party in connection with this Credit Agreement, the other Loan Documents or any transaction contemplated hereby or thereby contains any untrue statement of a material fact that would reasonably be expected to result in a Material Adverse Effect.

9.11. **No Default.** No event has occurred and is continuing which constitutes an Event of Default or a Potential Default.

9.12. **No Litigation.** There are no actions, suits, investigations or legal, equitable, arbitration or administrative proceedings pending, or to the knowledge of a Responsible Officer of it, threatened, against such Credit Party that would reasonably be expected to result in a Material Adverse Effect.

9.13. **Material Adverse Change.** No changes to it have occurred since the date of its most recent financial statements delivered to Lenders which would reasonably be expected to result in a Material Adverse Effect.

9.14. **Taxes.** To the extent that failure to do so would have a Material Adverse Effect, all tax returns required to be filed by it in any jurisdiction have been filed and all taxes, assessments, fees, and other governmental charges upon it or upon any of its respective properties, income or franchises have been paid prior to the time that such taxes could give rise to a lien thereon. There is no proposed tax assessment against it or any basis for such assessment which is material and is not being contested in good faith.

9.15. **Jurisdiction of Formation; Principal Office.** (a) The jurisdiction of formation of Borrower is Delaware; (b) the jurisdiction of formation of Managing Member is Delaware; (c)

the jurisdiction of formation of Guarantor is Delaware; and (d) the jurisdiction of formation of Pledgor is Maryland.

9.16. **ERISA Compliance. It has not established nor does it maintain any Plan.** (a) Each of Credit Party and Guarantor is an Operating Company; or (b) the underlying assets of each Credit Party do not otherwise constitute Plan Assets.

9.17. **Compliance with Law.** It is, to the best of its knowledge, in compliance in all material respects with all material laws, rules, regulations, orders, and decrees which are applicable to it or its properties, including, without limitation, Environmental Laws.

9.18. **Hazardous Substances.** To the knowledge of its Responsible Officers, it: (a) has not received any notice or other communication or otherwise learned of any Environmental Liability which would individually or in the aggregate reasonably be expected to have a Material Adverse Effect arising in connection with: (i) any non-compliance with or violation of the requirements of any Environmental Law by any Credit Party, or any permit issued under any Environmental Law to such Credit Party; or (ii) the Release or threatened Release of any Hazardous Material into the environment; and (b) to its knowledge, has threatened or actual liability in connection with the Release or threatened Release of any Hazardous Material into the environment which would individually or in the aggregate reasonably be expected to have a Material Adverse Effect.

9.19. **Insider.** It is not an “executive officer,” “director,” or “person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10% of any class of voting securities” (as those terms are defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of any Lender, of a bank holding company of which any Lender is a subsidiary, or of any subsidiary, of a bank holding company of which any Lender is a subsidiary, of any bank at which any Lender maintains a correspondent account, or of any bank which maintains a correspondent account with any Lender.

9.20. **Properties.** Each Credit Party has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for any defects that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Credit Party owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by such Credit Party and its subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

9.21. **Operating Structure.** As of the date hereof, the sole Managing Member of Borrower is Managing Member. The only members of Borrower and the only Stockholders of Pledgor are set forth on **Exhibit A** attached hereto and incorporated herein by reference (or on a revised **Exhibit A** delivered to Administrative Agent in accordance with **Section 11.5** hereof), and the Capital Commitment of each Investor is set forth on **Exhibit A** (or on such revised **Exhibit A**).

9.22. **Capital Commitments and Contributions.** The aggregate amount of the Unfunded Capital Commitments of all Investors as of the date hereof is as set forth on *Exhibit A*. The aggregate amount of the Unfunded Capital Commitments of all Included Investors and Designed Investors (separately) as of the date hereof is as set forth on *Exhibit A*. There are no Capital Call Notices outstanding except as otherwise disclosed in writing to Administrative Agent. To its knowledge, no Investor is in default under the Operating Agreement, Partnership Agreement or Stockholders Agreement, as applicable. Prior to the date hereof, each Credit Party has satisfied all conditions to its rights to make a Capital Call, including any and all conditions contained in its Constituent Documents.

9.23. **Fiscal Year.** Its fiscal year is the calendar year.

9.24. **Investment Company Act.** It is not required to register as an “*investment company*” within the meaning of the Investment Company Act of 1940, as amended.

9.25. **Margin Stock.** It is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Loan or Letter of Credit will be used: (a) to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock; (b) to reduce or retire any indebtedness which was originally incurred to purchase or carry any such Margin Stock; or (c) for any other purpose which might constitute this transaction a “*purpose credit*” within the meaning of Regulation T, U, or X. Neither it nor any Person acting on its behalf has taken or will take any action which might cause any Loan Document to violate Regulation T, U or X or any other regulation of the Board of Governors of the Federal Reserve System or to violate *Section 7* of the Securities Exchange Act, in each case as now in effect or as the same may hereafter be in effect.

9.26. **Foreign Asset Control Laws.** Neither it nor any Affiliate thereof, and no Investor or, to its knowledge, Affiliate thereof, is a Person named on a list published by the Office of Foreign Assets Control (“*OFAC*”) of the United States Treasury Department or is a Person with whom dealings are prohibited under any OFAC regulations. To its knowledge, no Investor’s funds used in connection with this transaction are derived from illegal or suspicious activities.

9.27. **Brokers’ Fees.** No Credit Party has dealt with any broker or finder with respect to the transactions contemplated by the Loan Documents or otherwise in connection with the Loan Documents.

9.28. **Solvency.** Each Credit Party is, and after consummation of the transactions contemplated by the Loan Documents will be, Solvent.

9.29. **Managing Member Representation.** Managing Member has received direct or indirect benefit from the Loans and Letters of Credit evidenced by the Obligations and the grant of the security interest in the collateral was a condition to granting such Loans and issuance of such Letters of Credit.

9.30. **Guarantor Representation.** Guarantor has received direct or indirect benefit from the Loans and Letters of Credit evidenced by the Obligations and the grant of the security

interest in the collateral was a condition to granting such Loans and issuance of such Letters of Credit.

9.31. **Pledgor Representation.** Pledgor has received direct or indirect benefit from the Loans and Letters of Credit evidenced by the Obligations and the grant of the security interest in the Collateral was a condition to granting such Loans and issuance of such Letters of Credit.

9.32. **Investments.** No investments made by any Credit Party or their subsidiaries, directly or indirectly, are in violation of, or would cause a default under, the terms of the Operating Agreement, the Partnership Agreement or the Stockholders Agreement.

9.33. **Investor Documents.** To the knowledge of each Credit Party after commercially reasonable inquiry, each Investor Letter and Stockholders Agreement, as applicable, have been duly authorized and executed by each Investor and constitute the legal, valid and binding obligations of each Investor, enforceable against each Investor in accordance with their terms.

9.34. **Advisory Committee.** The Credit Parties confirm that the members of the Advisory Committee (as defined in the Operating Agreement) as of the date hereof are Alan Forman, Verna Kuo, Susan Meaney, Denise Strack and Laudan Nabizadeh.

10. **AFFIRMATIVE COVENANTS.** So long as Lenders have any commitment to lend hereunder or the Letter of Credit Issuer has any obligation to cause the issuance of any Letters of Credit hereunder, and until payment in full of the Notes and the performance in full of the Obligations under this Credit Agreement and the other Loan Documents, Borrower and each other Credit Party, as applicable, each agrees that, unless Administrative Agent shall otherwise consent in writing based upon the approval of the Required Lenders (unless the approval of Administrative Agent alone or a different number of Lenders is expressly permitted below):

10.1. **Financial Statements, Reports and Notices.** Borrower shall deliver to Administrative Agent sufficient copies for each Lender of the following:

(a) **Annual Statements.** As soon as reasonably available and in any event within one hundred twenty (120) days after the end of each fiscal year of Borrower, audited, unqualified financial statements of Borrower, including a consolidated balance sheet of Borrower and its consolidated subsidiaries as of the end of such fiscal year and the related consolidated statements of operations for such fiscal year prepared by independent public accountants of nationally recognized standing;

(b) **Quarterly Statements.** As soon as available and in any event within sixty (60) days after the end of each quarter of each fiscal year of Borrower, an unaudited consolidated balance sheet of Borrower and its consolidated subsidiaries as of the end of such quarter and the related unaudited consolidated statements of operations for such quarter;

(c) **Borrowing Base Certificate.** Concurrently with the delivery of each Loan Notice or Request for Letter of Credit and each annual and quarterly report referenced in **Sections 10.1(a)** and **10.1(b)** hereof, and as of the last calendar day of any calendar month when no Borrowing has been made during such calendar month, a

Borrowing Base Certificate signed by a Responsible Officer of Borrower and Managing Member: (i) setting forth the Capital Contributions and Unfunded Capital Commitments of all of the Investors and a calculation of the Available Loan Amount (all as of the end of the relevant period); (ii) specifying changes, if any, in the names of Investors; and (iii) listing Investors who have not delivered Investor Letters or with respect to Subsequent Investors, who have not satisfied the conditions of **Section 11.5(c)** hereof;

(d) **Compliance Certificate.** Simultaneously with the delivery of the reports described in **clauses (a)** and **(b)** above, a compliance certificate (a “**Compliance Certificate**”), certified by a Responsible Officer of Borrower to be true and correct, substantially in the form of **Exhibit O** attached hereto (with blanks appropriately completed in conformity herewith): (i) stating that such officer is familiar with the terms and provisions of the Loan Documents; (ii) certifying that such financial statements fairly present the financial condition and the results of operations of the Borrower on the dates and for the periods indicated, on the basis of GAAP, subject, in the case of interim financial statements, to normally recurring year-end adjustments; (iii) stating that the Borrowers are in compliance with all covenants in **Section 10** hereof, including the covenants set forth in **Section 10.11**, and containing the calculations evidencing such compliance; (iv) stating whether any Event of Default or Potential Default exists on the date of such certificate and, if any Event of Default or Potential Default then exists, setting forth the details thereof and the action which the Credit Parties are taking or propose to take with respect thereto; (v) setting forth the Unfunded Capital Commitments of all Investors (breaking out Included Investors and Designated Investors) and a calculation of the Available Loan Amount (all as of the end of the relevant period); (vi) specifying changes, if any, in the name of any Investor or in the identity of any Investor, by merger or otherwise; and (vii) listing Investors which have been subject to an Exclusion Event.

(e) **ERISA Notices.** Promptly upon any Credit Party obtaining knowledge or a reasonable belief that its assets are, or are about to become, Plan Assets, such Credit Party shall deliver written notice thereof to Administrative Agent (an “**ERISA Event Notice**”), and shall, in such notice, or in subsequent written notices as events develop, notify Administrative Agent of any actions contemplated by in connection therewith. Each Credit Party shall, simultaneously with the delivery of any ERISA Notice to any Investors, deliver a copy of the same to Administrative Agent;

(f) **ERISA Certification.** Annually (to be delivered within forty-five (45) days following each annual valuation period of the Credit Parties and with the Compliance Certificate of Borrower pursuant to **Section 10.1(d)**), a certification from a Responsible Officer of the Credit Parties prepared in consultation with counsel that the assets of the Credit Parties do not constitute Plan Assets;

(g) **Reporting Relating to Investors.** Promptly upon the receipt thereof, copies of all financial statements, notices of default, notices relating in any way to an Investor’s funding obligation and notices containing any reference to misconduct of any Credit Party, sent to or received by a Borrower and/or any Credit Party from an Investor; and

(h) **Other Reporting.** Simultaneously with delivery to the Investors, copies of all other material financial statements, appraisal reports, notices, and other matters at any time or from time to time prepared by a Credit Party and furnished to the Investors, including, without limitation, any notice of default, notice of election or exercise of any rights or remedies under the Operating Agreement, the Partnership Agreement, the Stockholders Agreement, the Investor Letters or the Constituent Documents of any Credit Party, or any notices relating in any way to any Investor's Capital Commitment, and any notice relating in any way to the misconduct of any Credit Party.

10.2. **Payment of Taxes.** Each Credit Party will pay and discharge all taxes, assessments, and governmental charges or levies imposed upon it, upon its income or profits, or upon any property belonging to it before delinquent, if such failure would have a Material Adverse Effect; *provided, however*, that no Credit Party shall be required to pay any such tax, assessment, charge, or levy if and so long as the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings and appropriate reserves therefor have been established.

10.3. **Maintenance of Existence and Rights.** Each Credit Party will preserve and maintain its existence. Each Credit Party shall further preserve and maintain all of its rights, privileges, and franchises necessary in the normal conduct of its business and in accordance with all valid regulations and orders of any Governmental Authority the failure of which would have a Material Adverse Effect.

10.4. **Notice of Default.** Each Credit Party will furnish to Administrative Agent, promptly upon becoming aware of the existence of any condition or event which constitutes an Event of Default or a Potential Default (including, without limitation, notice from the Investors of any Credit Party that the Investors intend to seek a "Cause Event" as defined in the Operating Agreement, Partnership Agreement and Stockholders Agreement, a written notice specifying the nature and period of existence thereof and the action which the Credit Parties are taking or propose to take with respect thereto. Each Credit Party shall promptly notify Administrative Agent in writing upon becoming aware: (a) that any Investor has violated or breached any material term of the Operating Agreement, Partnership Agreement or Stockholders Agreement, as applicable, or has become a Defaulting Investor; or (b) of the existence of any condition or event which, with the lapse of time or giving of notice or both, would cause an Investor to become a Defaulting Investor.

10.5. **Other Notices.** Each Credit Party will, promptly upon receipt of actual knowledge thereof by a Responsible Officer, notify Administrative Agent of any of the following events that would reasonably be expected to result in a Material Adverse Effect: (a) any change in the financial condition or business of such Credit Party; (b) any default by such Credit Party under any material agreement, contract, or other instrument to which such Credit Party is a party or by which any of its properties are bound, or any acceleration of the maturity of any material indebtedness owing by such Credit Party; (c) any uninsured claim against or affecting such Credit Party or any of its properties; (d) the commencement of, and any material determination in, any litigation with any third party or any proceeding before any Governmental Authority affecting such Credit Party; (e) any Environmental Complaint or any claim, demand, action, event, condition, report or investigation indicating any potential or actual liability of such Credit

Party arising in connection with: (i) the non-compliance with or violation of the requirements of any Environmental Law or any permit issued under any Environmental Law; or (ii) the Release or threatened Release of any Hazardous Material into the environment; (f) the existence of any Environmental Lien on any Properties or assets of such Credit Party; (g) any material remedial action taken by any Credit Party in response to any order, consent decree or judgment of any Governmental Authority or any Environmental Liability; or (h) the listing of any of such Credit Party's Properties on CERCLIS to the extent that such Credit Party obtains knowledge of such listing, whether or not such listing would reasonably be expected to result in a Material Adverse Effect.

10.6. **Compliance with Loan Documents, Operating Agreement, Partnership Agreement and Stockholders Agreement.** Unless otherwise approved in accordance with the terms of this Credit Agreement (which approval, by such terms, may require more or fewer Lenders than the Required Lenders), each Credit Party will promptly comply with any and all covenants and provisions of this Credit Agreement, the Notes, and all of the other Loan Documents executed by it. Each Borrower Party will use the proceeds of any Capital Call Notices only for such purposes as are permitted by its Constituent Documents.

10.7. **Books and Records; Access.** Each Credit Party will give any representative of Administrative Agent, Managing Agent or Lenders, or any of them, reasonable access during all business hours to, and permit representatives to examine, copy, or make excerpts from, any and all books, records, and documents in the possession of such Credit Party and relating to its affairs, and to inspect any of the properties of such Credit Party.

10.8. **Compliance with Law.** Each Credit Party will comply in all material respects with all material laws, rules, regulations, and all orders of any Governmental Authority, including, Environmental Laws and ERISA.

10.9. **Insurance.** Each Credit Party will maintain workmen's compensation insurance, liability insurance, and insurance on its present and future properties, assets, and business against such casualties, risks, and contingencies, and in such types and amounts, as are consistent with customary practices and standards of their industry and the failure of which to maintain could have a Material Adverse Effect.

10.10. **Authorizations and Approvals.** Each Credit Party will promptly obtain, from time to time at its own expense, all such governmental licenses, authorizations, consents, permits and approvals as may be required to enable such Credit Party to comply with its respective obligations hereunder, under the other Loan Documents, the Operating Agreement, the Partnership Agreement, the Stockholders Agreement and its respective Constituent Documents.

10.11. **Maintenance of Liens.** Each Credit Party shall perform all such acts and execute all such documents as Administrative Agent may reasonably request in order to enable the Secured Parties to report, file, and record every instrument that Administrative Agent may deem necessary in order to perfect and maintain the Secured Parties' Liens and security interests in the Collateral and otherwise to preserve and protect the rights of Secured Parties under the Collateral Documents.

10.12. **Further Assurances.** Each Credit Party will make, execute or endorse, and acknowledge and deliver or file or cause the same to be done, all such vouchers, invoices, notices, certifications, and additional agreements, undertakings, conveyances, transfers, assignments, financing statements, or other assurances, and take any and all such other action, as Administrative Agent may, from time to time, reasonably deem necessary in connection with this Credit Agreement or any of the other Loan Documents, the obligations of the Credit Parties hereunder or thereunder, or for better assuring and confirming unto Secured Parties all or any part of the security for any of such obligations anticipated herein.

10.13. **Investor Financial and Rating Information.** Each Credit Party shall request, from each Investor (without duplication), financial information required under the applicable Investor Letter, as agreed from time to time with Administrative Agent, and shall, upon receipt of such information, promptly deliver same to Administrative Agent, or shall promptly notify Administrative Agent of its failure to timely obtain such information. The Credit Parties will promptly notify Administrative Agent in writing (but in no event later than five (5) Business Days) after: (a) becoming aware of: (i) any decline in the Rating of any Included Investor; or decline in the capital status of any Included Investor that is a bank holding company, whether or not such change results in an Exclusion Event and (ii) any other Exclusion Event; and (b) becoming aware of the existence of any condition or event which, with the lapse of time or giving of notice or both, would cause an Exclusion Event.

10.14. **Certain Included Investor Requirements.** In addition to the other requirements of this Credit Agreement, each Included Investor that is: (i) organized under the laws of any jurisdiction other than the United States of America or any state thereof shall deliver to Administrative Agent a written submission to the jurisdiction of a United States Federal District Court and a United States state court with respect to any litigation arising out of or in connection with its Investor Letter or any Constituent Document of any Credit Party (each submission to be in form and substance reasonably satisfactory to Administrative Agent, including provisions relating to waiver of venue, waiver of defense of inconvenient forum, and consent to service of process; or (ii) a Governmental Authority or an instrumentality of a Governmental Authority or majority-owned by a Governmental Authority or otherwise entitled to any immunity in respect of any litigation in any jurisdiction, court or venue, shall deliver to Administrative Agent a written waiver (in form and substance reasonably satisfactory to Administrative Agent) of any such claim of immunity.

10.15. **Covenants of Qualified Borrowers.** The covenants and agreements of Qualified Borrowers hereunder shall be binding and effective only upon and after the execution and delivery of a Qualified Borrower Note by such Qualified Borrower.

11. NEGATIVE COVENANTS. So long as Lenders have any commitment to lend hereunder or the Letter of Credit Issuer has any obligation to cause the issuance of any Letter of Credit hereunder, and until payment and performance in full of the Obligations under this Credit Agreement and the other Loan Documents, each Credit Party agrees that, without the written consent of Administrative Agent, based upon the approval of Required Lenders (unless the approval of Administrative Agent alone or a different number of Lenders is expressly permitted below):

11.1. **Mergers.** No Credit Party will merge or consolidate with or into any Person, unless such Credit Party is the surviving entity; *provided, however*, that any such merger (a) must be duly authorized under the Constituent Documents of the applicable Credit Party or the applicable managing member or general partner, as applicable, and (b) must not adversely affect the enforceability of the Capital Commitments and the Investor Letters of the Investors in the applicable Credit Party. No Credit Party will take any action to dissolve, terminate, or liquidate, including, without limitation, any action to sell or dispose of all or substantially all of its property..

11.2. **Negative Pledge.** Without the approval of all Lenders, no Credit Party will create or suffer to exist any Lien upon the Collateral, other than the first priority security interest in and upon the Collateral (or any portion thereof) to Administrative Agent for the benefit of the Secured Parties.

11.3. **Fiscal Year and Accounting Method.** Without the prior written consent of Administrative Agent alone (such approval not to be unreasonably withheld or delayed), no Credit Party will change its fiscal year or method of accounting.

11.4. **Constituent Documents.** Without the prior written consent of Administrative Agent consistent with this **Section 11.4**, no Credit Party shall alter, amend, modify, terminate, or change any provision of its Constituent Documents affecting such Credit Party's or the Investors' debts, duties, obligations, and liabilities, and the rights, titles, security interests, liens, powers and privileges of any Credit Party, Administrative Agent or Secured Parties, in each case relating to this Agreement, the Obligations, Capital Call Notices, Capital Commitments, Capital Contributions or Unfunded Capital Commitments; or amend the terms of *Articles V or XI* of the Operating Agreement or *Section 6* of the Stockholders Agreement (or comparable provisions regarding leverage) (each an "**adverse amendment**"); or suspend, reduce, excuse or terminate any Investor's Unfunded Commitments. With respect to any proposed amendment, modification or change to any Constituent Document, the applicable Credit Party shall notify Administrative Agent of such proposal. Administrative Agent shall determine, in its sole discretion (that is, the determination of the Lenders shall not be required) on Administrative Agent's good faith belief, whether such proposed amendment, modification or change to such Constituent Document is an adverse amendment, and shall use reasonable efforts to notify such Credit Party of its determination within five (5) Business Days of the date on which it received such notification pursuant to **Section 14.7**. If Administrative Agent determines that the proposed amendment is an adverse amendment, the approval of the Required Lenders and Administrative Agent will be required (unless the approval of all Lenders is required consistent with the terms of **Section 11.6**), and Administrative Agent shall promptly notify the Lenders of such request for such approval, distributing, as appropriate, the proposed amendment and any other relevant

information provided by such Credit Party, to which the Lenders will respond to within ten (10) Business Days. If Administrative Agent determines that the proposed amendment is not an adverse amendment, such Credit Party may make such amendment without the consent of Lenders. Notwithstanding the foregoing, without the consent of Administrative Agent or the Lenders, such Credit Party may amend its Constituent Documents: (i) to admit new Investors to the extent permitted by this Credit Agreement; and (ii) to reflect transfers of interests permitted by this Credit Agreement.

11.5. **Transfer by, or Admission of, Investors.**

(a) **Transfer of Equity Interest.** Any transfer of an Equity Interest: (i) by any Investor to any of its affiliates shall be made with prior written notice to Administrative Agent promptly upon any Credit Party being aware of such proposed transfer; and (ii) by any Investor to any other Person, with prior written notice to Administrative Agent at least twenty (20) Business Days prior to the proposed date of transfer, in each case provided that the transferee is not named on a list published by OFAC. In the event that the applicable transferee does not itself qualify as an Included Investor or Designated Investor or if the consummation of such transfer would require a mandatory prepayment pursuant to **Section 2.1(d)** for any reason, the Credit Parties will issue Capital Call Notices in an amount sufficient to cure such Implicit Borrowing Base Deficit and will pay the mandatory prepayment prior to permitting the consummation of any such transfer.

(b) **Admission of Investors.** No Credit Party shall admit any Person as an additional Investor without the prior written consent of Administrative Agent acting alone, such consent not to be unreasonably withheld.

(c) **Documentation Requirements.** Each Borrower shall require that: (i) any Person admitted as a substitute or new Included Investor or Designated Investor (whether due to a transfer by an existing Investor or otherwise) (a “**Subsequent Investor**”) shall, as a condition to such admission, deliver an Investor Letter and provide other documentation similar to that described in **Section 8.1(p)** satisfactory to Administrative Agent in its reasonable discretion; (ii) comply with all requirements herein for an Included Investor or Designated Investor, as applicable, and (iii) any existing Included Investor or Designated Investor that is a transferee from another Investor shall provide confirmation of its obligations under its Investor Letter with respect to any increase in its Capital Commitment relating to such transfer, and, to the extent not addressed in the documentation previously delivered by such Investor, evidence of its authority to assume such increased Capital Commitment, all as satisfactory to Administrative Agent in its reasonable discretion. Any substitute or new Investor that is unable to comply with the requirements of this **Section 11.5(c)** shall be a Non-Included Investor and be excluded from the Borrowing Base. In the event any Person is admitted as a Subsequent Investor, Borrowers will promptly deliver to Administrative Agent a revised **Exhibit A** to this Credit Agreement, containing the names and addresses of each Investor and the Capital Commitments of each.

11.6. Capital Commitments. No Credit Party shall: (a) without the prior written consent of Administrative Agent, which may be withheld in its sole discretion, cancel, reduce, excuse, suspend or defer the Capital Commitment of any non-Included Investor; and (b) without the prior written approval of Administrative Agent and all Lenders: (i) issue any Capital Call Notices other than as contemplated by **Section 5.2(c)**; (ii) cancel, reduce, excuse, suspend or defer the Capital Commitment of any Included Investor or Designated Investor; or (iii) excuse any Investor from or permit any Investor to defer any Capital Contribution, if the proceeds from the related Capital Call Notice are to be applied to the Obligations hereunder.

11.7. ERISA Compliance. No Credit Party shall establish or maintain any Plan. Without the approval of all Lenders, no Credit Party will take any action that would cause its underlying assets to constitute Plan Assets.

11.8. Environmental Matters. Except for such conditions as are in or will promptly be brought into compliance with relevant Environmental Laws or otherwise would not reasonably be expected to result in a Material Adverse Effect, no Credit Party: (a) shall cause any Hazardous Material to be generated, placed, held, located or disposed of on, under or at, or transported to or from, any Property of any Credit Party in material violation of Environmental Law; or (b) shall permit any such Property to ever be used as a dump site or storage site (whether permanent or temporary) for any Hazardous Material in material violation of Environmental Law.

11.9. Dissolution. Without the prior written consent of the Administrative Agent and all Lenders, no Credit Party will take any action to dissolve or terminate any Credit Party.

11.10. Limitations on Dividends and Distributions.

(a) No Credit Party shall declare or pay any dividends or distributions except as permitted under its Constituent Documents.

(b) No Credit Party shall declare or pay any dividends or distributions if: (i) any Event of Default exists; or (ii) a Potential Default exists.

11.11. Limitation on Debt. (a) Borrower shall not, without the prior written consent of the Administrative Agent and the Required Lenders, incur, together with its Affiliates on a consolidated basis in accordance with GAAP, (i) aggregate Indebtedness (including the Obligations) in an amount in excess of that permitted under the Operating Agreement; or (ii) any recourse debt (other than its obligations under this Credit Agreement) in excess of twenty-five (25%) percent of amounts under **Section 11.11(a)(i)**; and (b) Pledgor shall not incur any Indebtedness (other than its obligations under this Credit Agreement).

11.12. Limitation on Managing Member's Activities. The Managing Member shall not: (a) without the prior written consent of the Administrative Agent and the Required Lenders: (i) take any actions that will cause the Managing Member or the Borrower to dissolve, terminate, merge or consolidate; or (ii) create or suffer to exist any mortgage, pledge, lien, or other security interest upon its Membership Interest in Borrower; or (b) transfer its Membership Interest in Borrower without the prior written consent of Administrative Agent and the Required Lenders.

11.13. **Limitation on Pledgor's Activities.** Pledgor shall not: (a) without the prior written consent of the Administrative Agent and the Required Lenders: (i) take any actions that will cause the Pledgor to dissolve, terminate, merge or consolidate; or (ii) create or suffer to exist any mortgage, pledge, lien, or other security interest upon its Membership Interest in Borrower; or (b) transfer its Membership Interest in Borrower without the prior written consent of Administrative Agent and the Required Lenders.

11.14. **Limitation on Guarantor's Activities.** Guarantor shall not: (a) without the prior written consent of the Administrative Agent and the Required Lenders: (i) take any actions that will cause the Guarantor or Acadia Realty Acquisition III LLC to dissolve, terminate, merge or consolidate; or (ii) create or suffer to exist any mortgage, pledge, lien, or other security interest upon its equity interest in Acadia Realty Acquisition III LLC or permit Acadia Realty Acquisition III LLC to create or suffer to exist any mortgage, pledge, lien, or other security interest upon its Membership Interest in Borrower; or (b) transfer its equity interest in Acadia Realty Acquisition III LLC or permit Acadia Realty Acquisition III LLC to transfer its Membership Interest in Borrower, in each case without the prior written consent of Administrative Agent and the Required Lenders.

11.15. **Investor Withdrawal.** No Credit Party shall take any action which would permit any Investor to withdraw (unless a prepayment is made such that no Implicit Borrowing Base Deficit would occur as a result of such withdrawal) from any Credit Party in accordance with the Operating Agreement, Partnership Agreement, or the Stockholders Agreement, as applicable.

12. EVENTS OF DEFAULT

12.1. **Events of Default.** An "*Event of Default*" shall exist if any one or more of the following events (herein collectively called "*Events of Default*") shall occur and be continuing:

(a) (i) Borrower or any Qualified Borrower shall fail to pay when due any principal of the Obligations; or (ii) any Credit Party or any Qualified Borrower shall fail to pay when due any interest on the Obligations or any fee, expense, or other payment required hereunder, including, without limitation, payment of cash for deposit as cash collateral as required hereunder, and such failure under this *clause (ii)* shall continue for one (1) Business Day thereafter (except for the failure to pay the Obligations in full on the Maturity Date for which no notice shall be required and except for the failure to prepay any amount required under *Section 2.1(d)* hereof for which no additional notice shall be required);

(b) any representation or warranty made by any Credit Party or any Qualified Borrower under this Credit Agreement, or any of the other Loan Documents executed by either of them, or in any certificate or statement furnished or made to Lenders or any of them by any Credit Party or any Qualified Borrower pursuant hereto or in connection herewith or with the Loans, shall prove to be untrue or inaccurate in any material respect as of the date on which such representation or warranty is made;

(c) default shall occur in the performance of any of the covenants or agreements contained herein (other than the covenants contained in *Section 2.1(d)*)
or

Section 11), or of the covenants or agreements of any Credit Party or any Qualified Borrower contained in any other Loan Documents executed by such Person, and such default shall continue uncured to the satisfaction of Administrative Agent for a period of thirty (30) days after written notice thereof has been given by Administrative Agent to Borrower, unless it cannot be cured within thirty (30) days and provided the party is diligently proceeding to cure (provided that such thirty (30)-day cure period shall not apply respecting covenants of a Credit Party relating to notices to be given by a Credit Party, but a three (3)-day grace period shall apply);

(d) default shall occur in the performance of the covenants or agreements of Borrower or any Qualified Borrower contained in **Section 2.1(d)** or **Section 11**;

(e) any of the Loan Documents executed by a Credit Party or any Qualified Borrower shall cease, in whole or in material part, to be legal, valid, binding agreements enforceable against the Credit Parties or such Qualified Borrower in accordance with the terms thereof or shall in any way be terminated or become or be declared ineffective or inoperative or shall in any way whatsoever cease to give or provide the respective liens, security interest, rights, titles, interest, remedies, powers, or privileges intended to be created thereby;

(f) default shall occur in the payment of any recourse indebtedness or Guaranty Obligation of Borrower or Guarantor (other than the Obligations), in an aggregate amount greater than or equal to \$10,000,000, and such default shall continue for more than the applicable period of grace, if any;

(g) any Credit Party shall: (i) apply for or consent to the appointment of a receiver, trustee, custodian, intervenor, or liquidator of itself or of all or a substantial part of its assets; (ii) file a voluntary petition in bankruptcy or admit in writing that it is unable to pay its debts as they become due; (iii) make a general assignment for the benefit of creditors; (iv) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any Debtor Relief Laws; (v) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or (vi) take partnership or corporate action for the purpose of effecting any of the foregoing;

(h) a case or proceeding shall be commenced, without application or consent of any Credit Party, in any court, seeking an order for relief under the Bankruptcy Code, to adjudicate if bankrupt or insolvent or seeking the liquidation, reorganization, debt arrangement, dissolution, winding up or composition or readjustment of debts of any Credit Party, the appointment of a trustee, receiver, custodian, liquidator, assignee or sequestor (or similar official) for such Person or all or substantially all of the assets of such Person, or any similar action with respect to such Person under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed or in effect, for a period of sixty (60) consecutive days or results in the entering of an order for relief or any such adjudication or appointment

(i) any final judgment(s) for the payment of money in excess of the sum of \$5,000,000 in the aggregate shall be rendered against any Credit Party and such judgment or judgments remain unsatisfied for a period of sixty (60) days or would reasonably be expected to have a Material Adverse Effect, unless covered by insurance or unless being appealed and the applicable Credit Party or such Qualified Borrower has posted a bond or cash collateral;

(j) Managing Member shall cease to be the sole Managing Member of Borrower or Managing Member shall be removed as the Managing Member of Borrower;

(k) Managing Member shall repudiate, challenge, or declare unenforceable its obligation to make contributions to the capital of Borrower pursuant to its Capital Commitments or shall otherwise disaffirm the provisions of the Operating Agreement;

(l) there shall occur any change in the condition (financial or otherwise) of any Credit Party which, in the reasonable judgment of Administrative Agent, has a Material Adverse Effect (it being understood that the occurrence of Exclusion Events in respect of one or more Investors is not, in and of itself, an event constituting a Material Adverse Effect);

(m) Pledgor shall repudiate, challenge, or declare unenforceable its obligation to make contributions to the capital of Borrower pursuant to its Capital Commitments or shall otherwise disaffirm the provisions of the Operating Agreement or shall repudiate, challenge, declare unenforceable or default under its obligations under the Capital Contributions Pledge Agreement;

(n) the removal of the Managing Member pursuant to Section 10.2(a) of the Operating Agreement or the removal of the Acadia D.R. Management Inc. pursuant to Section 5.2 of the Stockholders Agreement;

(o) Guarantor shall repudiate, challenge declare unenforceable or default under its obligations under the Guaranty of Capital; or

(p) the Borrowing Base Deficit is greater than zero (0) and is not eliminated within one (1) Business Day.

12.2. Remedies Upon Event of Default. If an Event of Default shall have occurred and be continuing, then Administrative Agent may, and, upon the direction of the Required Lenders, shall: (a) suspend the Commitments of Lenders until such Event of Default is cured; (b) terminate the Commitment of Lenders hereunder; (c) declare the principal of, and all interest then accrued on, the Obligations to be forthwith due and payable (including the liability to fund the Letter of Credit Liability pursuant to **Section 2.5(g)** hereof), whereupon the same shall forthwith become due and payable without presentment, demand, protest, notice of default, notice of acceleration, or of intention to accelerate or other notice of any kind all of which each of Borrower, each Qualified Borrower and each other Credit Party hereby expressly waives, anything contained herein or in any other Loan Document to the contrary notwithstanding; (d) require that the Borrower Parties Cash Collateralize the Letter of Credit Liability; (e) exercise any right, privilege, or power set forth in **Section 5.2** hereof, including, but not limited to, the

initiation of Capital Call Notices of the Capital Commitments; or (f) without notice of default or demand, pursue and enforce any of Administrative Agent's or Lenders' rights and remedies under the Loan Documents, or otherwise provided under or pursuant to any applicable law or agreement; *provided, however*, that if any Event of Default specified in **Section 12.1(g)** or **12.1(h)** hereof shall occur, the principal of, and all interest on, the Obligations shall thereupon become due and payable concurrently therewith, without any further action by Administrative Agent or Lenders, or any of them, and without presentment, demand, protest, notice of default, notice of acceleration, or of intention to accelerate or other notice of any kind, all of which each of Borrower, each Qualified Borrower and Guarantor hereby expressly waives.

12.3. Performance by Administrative Agent. Should any Credit Party or any fail to perform any covenant, duty, or agreement contained herein or in any of the Loan Documents, and such failure continues beyond any applicable cure period, Administrative Agent may, but shall not be obligated to, perform or attempt to perform such covenant, duty, or agreement on behalf of such Person. In such event, each Credit Party shall, at the request of Administrative Agent promptly pay any amount expended by Administrative Agent in such performance or attempted performance to Administrative Agent, together with interest thereon at the Default Rate from the date of such expenditure until paid. Notwithstanding the foregoing, it is expressly understood that neither any of the Agents nor any of the other Secured Parties assume any liability or responsibility for the performance of any duties any Credit Party, or any related Person hereunder or under any of the Loan Documents or other control over the management and affairs of any Credit Party, or any related Person, nor by any such action shall any of the Agents or any of the other Secured Parties be deemed to create a partnership arrangement with any Credit Party or any related Person.

13. AGENCY PROVISIONS

13.1. Appointment and Authorization of Agents.

(a) Authority. Each Lender (including any Person that is an assignee, participant, secured party or other transferee with respect to the interest of such Lender in any Principal Obligation or otherwise under this Credit Agreement) (collectively with such Lender, a "**Lender Party**") hereby irrevocably appoints, designates and authorizes each Agent (other than a Managing Agent for a different Lender Group) to take such action on its behalf under the provisions of this Credit Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to such Agent by the terms hereof and of the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere herein and in any other Loan Documents, no Agent shall have any duties or responsibilities, except those expressly set forth herein and therein, nor shall any Agent have or be deemed to have any fiduciary relationship with any Lender Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Credit Agreement or any of the other Loan Documents or otherwise exist against any Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such

term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) **Release of Collateral.** The Secured Parties irrevocably authorize Administrative Agent, at Administrative Agent's option and in its discretion, to release any security interest in or Lien on any Collateral granted to or held by Administrative Agent: (i) upon termination of this Credit Agreement and the other Loan Documents, termination of the Commitments and all Letters of Credit (or the Cash Collateralization in full of all Letters of Credit), and payment in full of all Obligations, including all fees and indemnified costs and expenses that are then due and payable pursuant to the terms of the Loan Documents; and (ii) if approved by the requisite Lenders pursuant to the terms of **Section 14.1**. Upon the request of Administrative Agent, the Lenders will confirm in writing Administrative Agent's authority to release particular types or items of Collateral pursuant to this **Section 13.1(b)**.

(c) **Limitation on Beneficiaries.** The provisions of **Sections 13.1** through **13.8** and **Section 13.10** are solely for the benefit of the Administrative Agent, the Lenders, the Letter of Credit Issuer and the other Secured Parties, and no Credit Party shall have rights as a third party beneficiary of any of such provisions.

13.2. Delegation of Duties. Each Agent may execute any of its duties under this Credit Agreement or under the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of legal counsel, accountants, and other professionals concerning all matters pertaining to such duties. No Agent shall be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

13.3. Exculpatory Provisions. No Agent-Related Person shall be liable for any action taken or omitted to be taken by it under or in connection herewith or in connection with any of the other Loan Documents or the transactions contemplated hereby (except for its own gross negligence or willful misconduct) or be responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any of the Credit Parties contained herein or in any of the other Loan Documents or in any certificate, report, document, financial statement or other written or oral statement referred to or provided for therein, or received by such Agent under or in connection herewith or in connection with the other Loan Documents, or enforceability or sufficiency of this Credit Agreement of any of the other Loan Documents, or for any failure of any Credit Party to perform its obligations hereunder or thereunder. No Agent-Related Person shall be responsible to any Lender to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or in the other Loan Documents or as to the use of the proceeds of the Loans or the use of the Letters of Credit or of the existence or possible existence of any Potential Default or Event of Default or to inspect the properties, books or records of the Credit Parties. The Agents are not trustees for the Lenders and owe no fiduciary duty to the Lender Groups. Each Lender recognizes and agrees that Administrative Agent shall not be required to determine independently whether the conditions described in **Sections 8.2(a)** or **8.2(b)** have been satisfied and, when Administrative Agent disburses funds to Borrower or a Qualified Borrower or the

Letter of Credit Issuer causes Letters of Credit to be issued, it may rely fully upon statements contained in the relevant requests by a Borrower Party.

13.4. Reliance on Communications. The Agents shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, facsimile, telex or telephone message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to any of the Credit Parties, independent accountants and other experts selected by the Agents with reasonable care). Each Agent may deem and treat each Lender as the owner of its interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with Administrative Agent in accordance with **Section 14.12(b)**. Each Agent shall be fully justified in failing or refusing to take any action under this Credit Agreement or under any of the other Loan Documents unless it shall first receive such advice or concurrence of the Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Loan Documents in accordance with a request of the Required Lenders (or to the extent specifically required, all of the Lenders) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders (including their successors and assigns).

13.5. Notice of Default. No Agent shall be deemed to have knowledge or notice of the occurrence of any Potential Default or Event of Default hereunder unless such Agent has received notice from a Lender or a Borrower Party referring to the Loan Document, describing such Potential Default or Event of Default and stating that such notice is a “notice of potential default or event of default.” Each Agent will notify the Lenders of its receipt of any such notice, and Administrative Agent shall take such action with respect to such Potential Default or Event of Default as shall be reasonably directed by the requisite Lenders and as is permitted by the Loan Documents; *provided, however*, that unless and until the Administrative Agent shall have received any such request, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Potential Default or Event of Default as it shall deem advisable or in the best interest of the Lenders.

13.6. Non-Reliance on Agents and Other Lenders. Each Lender expressly acknowledges that no Agent-Related Person or Arranger nor any of their officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representations or warranties to it and that no act by any Agent-Related Person or Arranger hereafter taken, including any consent to any acceptance of any assignment or review of the affairs of any Borrower Party or any of its Affiliates, shall be deemed to constitute any representation or warranty by the Agent-Related Person or Arranger to any Lender. Each Lender, including any Lender by assignment, represents to each Agent and Arranger that it has, independently and without reliance upon any Agent-Related Person, any Arranger or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of each Credit Party (or its Affiliates) and all applicable bank regulatory laws

related to the transactions contemplated hereby and made its own decision to make its Loans hereunder and enter into this Credit Agreement. Each Lender also represents that it shall, independently and without reliance upon any Agent-Related Person, any Arranger or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Credit Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of any Borrower Party (or its Affiliates). Except for notices, reports and other documents expressly required to be furnished to the Lenders by Administrative Agent hereunder, neither any Agent nor any Arranger shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of the Borrower Parties which may come into the possession of any Agent-Related Person or Arranger or any of their officers, directors, employees, agents, attorneys-in-fact or affiliates.

13.7. **Indemnification.** Whether or not the transactions contemplated hereby are consummated, the Alternate Lenders shall indemnify, upon demand, each Agent-Related Person (to the extent not reimbursed by a Borrower Party and without limiting the obligation of the Borrower Parties to do so), ratably in accordance with the applicable Alternate Lender's respective Alternate Lender Pro Rata Share of its Lender Group's Lender Group Percentage, and hold harmless each Agent-Related Person from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including without limitation at any time following payment in full of the Obligations) be imposed on, incurred by or asserted against it in its capacity as such in any way relating to or arising out of this Credit Agreement or the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by it under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Person's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction or related to another Lender Group's Managing Agent; provided, further, that no action taken in accordance with the directions of the Required Lenders or all Lenders, as applicable, shall be deemed to constitute gross negligence or willful misconduct for purposes of this **Section 13.7**. Without limitation of the foregoing, each Alternate Lender shall reimburse Administrative Agent, the Letter of Credit Issuer and its Managing Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by such Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Credit Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that such Agent is not reimbursed for such expenses by or on behalf of the Borrower Parties. The agreements in this **Section 13.7** shall survive the termination of the Commitments, payment of all of the Obligations hereunder and under the other Loan Documents or any documents contemplated by or referred to herein or therein, as well as the resignation or replacement of any Agent.

13.8. Agents in Their Individual Capacity. Each Agent (and any successor acting as an Agent) and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Credit Party (or any of its subsidiaries or Affiliates) as though such Agent were not an Agent or a Lender hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding the Credit Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that such Agent shall be under no obligation to provide such information to them. With respect to the Loans made and Letters of Credit issued and all obligations owing to it, an Agent acting in its individual capacity shall have the same rights and powers under this Credit Agreement as any Lender and may exercise the same as though it were not an Agent, and the terms “Lender” and “Lenders” shall include each Agent in its individual capacity.

13.9. Successor Agent. Any Agent may, at any time, resign upon twenty (20) days written notice to the Lenders and the Credit Parties. Upon any such resignation of the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent from any of the Alternate Lenders, in consultation with the Borrower. If no successor agent is appointed prior to the effective date of the resignation of the applicable Agent, then the retiring Agent may appoint, after consulting with the Lenders and the Borrower, a successor Agent from any of the Alternate Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall thereupon succeed to all the rights, powers and duties of the retiring Agent, and shall assume the duties and obligations of such retiring Agent, and the retiring Agent shall be discharged from its duties and obligations as Agent under this Credit Agreement and the other Loan Documents. After any retiring Agent’s resignation hereunder as Agent, the provisions of this **Section 13.9** and **Sections 14.3** and **13.8** shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Credit Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent’s notice of resignation, the retiring Agent’s resignation shall nevertheless thereupon become effective and the applicable Alternate Lenders shall perform all of the duties of the Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

13.10. No Other Duties, Etc. Anything herein to the contrary notwithstanding, no Agent shall have any powers, duties or responsibilities under this Credit Agreement or any of the other Loan Documents, except in its capacity, as applicable, as Administrative Agent, a Lender or the Letter of Credit Issuer hereunder.

13.11. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Liability shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Credit Parties) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letter of Credit Liability and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Secured Party, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent hereunder.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Secured Party any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Secured Party or to authorize Administrative Agent to vote in respect of the claim of any Secured Party in any such proceeding.

14. MISCELLANEOUS

14.1. **Amendments.** Neither this Credit Agreement nor any other Loan Document, nor any of the terms hereof or thereof, may be amended, waived, discharged or terminated, unless such amendment, waiver, discharge, or termination is in writing and signed by Administrative Agent, based upon the approval of the appropriate number of Lenders required hereunder, or such Lenders, on the one hand, and the Credit Parties, on the other hand; and, if the rights or duties of an Agent are affected thereby, by such Agent, *provided that* no such amendment, waiver, discharge, or termination shall, without the consent of:

(a) each Lender affected thereby:

(i) reduce or increase the amount or alter the term of the Commitment of such Lender, or alter the provisions relating to any fees (or any other payments) payable to such Lender;

(ii) extend the time for payment for the principal of or interest on the Obligations, or fees or costs, or reduce the principal amount of the Obligations (except as a result of the application of payments or prepayments), or reduce the rate of interest borne by the Obligations (other than as a result of waiving the applicability of the Default Rate), or otherwise affect the terms of payment of the principal of or any interest on the Obligations or fees or costs hereunder;

(iii) release any Liens granted under the Collateral Documents, except as otherwise contemplated herein or therein, and except in connection with the transfer of interests in a Credit Party permitted hereunder or in any other Loan Documents;

(iv) release the Guaranty granted pursuant to the Guaranty of Capital or limit or otherwise modify the liability of Guarantor under any of the Loan Documents; and

(v) extend the Stated Maturity Date or Maturity Date;

(b) all Lenders:

(i) permit the cancellation, excuse or reduction of the Capital Commitment of any Included Investor or Designated Investor;

(ii) amend the definitions of (A) "**Applicable Requirement**"; (B) "**Available Loan Amount**"; (C) "**Eligible Available Contributions of the Designated Investors**"; (D) "**Eligible Available Contributions of the Included Investors**"; (E) "**Included Investor**"; (F) "**Inclusion Percentage**"; (G) "**Designated Investor**"; (H) "**Unfunded Capital Commitment**"; (I) "**Borrowing Base**"; or (J) "**Exclusion Event**";

(iii) change the percentages specified in the definition of Required Lenders or any other provision hereof specifying the number or percentage of Lenders which are required to amend, waive or modify any rights hereunder or otherwise make any determination or grant any consent hereunder;

(iv) consent to the assignment or transfer by a Credit Party of any of their respective rights and obligations under (or in respect of) the Loan Documents; or

(v) amend, waive or in any way modify or suspend any provision requiring the *pro rata* application of payments of the Obligations to Lenders; or

(vi) amend the terms of this **Section 14.1**.

Administrative Agent agrees that it will promptly notify the Managing Agents (who will in turn promptly notify the Lenders in its Lender Group) of any proposed modification or amendment to any Loan Document, and deliver drafts of any such proposed modification or amendment to the Managing Agents (who will in turn promptly deliver to the Lenders in its Lender Group), prior to the effectiveness of such proposed modification or amendment. Notwithstanding the above: (A) no provisions of **Section 13** may be amended or modified without the consent of Administrative Agent; (B) no provisions of **Section 2.5** may be amended or modified without the consent of the Letter of Credit Issuer; and (C) **Sections 10** and **11** specify the requirements for waivers of the affirmative covenants and negative covenants listed

therein, and any amendment to any provision of **Section 10** or **Section 11** shall require the consent of the Lenders that are specified therein as required for a waiver thereof. Any amendment, waiver or consent not specifically addressed in this **Section 14.1** or otherwise shall be subject to the approval of Required Lenders.

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above and in **Section 11**: (1) each Lender is entitled to vote as such Lender sees fit on any reorganization plan that affects the Loans or the Letters of Credit, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersede the unanimous consent provisions set forth herein; (2) the Required Lenders may consent to allow a Borrower Party to use cash collateral in the context of a bankruptcy or insolvency proceeding; and (3) Administrative Agent may, in its sole discretion, agree to the modification or waiver of any of the other terms of this Credit Agreement or any other Loan Document or consent to any action or failure to act by any Credit Party, if such modification, waiver, or consent is of an administrative nature.

If Administrative Agent shall request the consent of any Lender to any amendment, change, waiver, discharge, termination, consent or exercise of rights covered by this Credit Agreement, and not receive such consent or denial thereof in writing within ten (10) Business Days of the making of such request by Administrative Agent, as the case may be, such Lender shall be deemed to have given its consent to the request.

14.2. Setoff. In addition to any rights and remedies of the Lenders provided by law, upon the occurrence and during the continuance of any Event of Default, each Lender is authorized at any time and from time to time, without prior notice to any Credit Party or any other obligor, any such notice being waived by each Credit Party (on its own behalf and on behalf of each obligor) to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender to or for the credit or the account of any Credit Party against any and all of the Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not Administrative Agent or such Lender shall have made demand under this Credit Agreement or any other Loan Document and although such Obligations may be contingent or unmatured. Each Lender agrees promptly to notify the applicable Credit Party and Administrative Agent after any such setoff and application made by such Lender; *provided, however*, that the failure to give such notice shall not affect the validity of such set-off and application.

14.3. Sharing of Payments. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the Loans made by it or the participations in Letters of Credit held by it, any payment (whether voluntary, involuntary, through the exercise of any right of setoff, the receipt of any proceeds from a Capital Call or the exercise of any remedies under any Collateral Documents, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately: (a) notify Administrative Agent of such fact; and (b) purchase from the other Lenders such participations in the Loans made by them and/or such subparticipations in the participations in Letters of Credit held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such of Loans or such participations, as the case may be, *pro rata* with each of them; *provided*,

however, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender, such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of: (i) the amount that such paying Lender's required repayment bears to; (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. Each Credit Party agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff, but subject to **Section 14.2**) with respect to such participation as fully as if such Lender were the direct creditor of the Credit Parties in the amount of such participation. Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this **Section 14.3** and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Credit Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. To the extent required to implement the sharing of payments under this **Section 14.3**, each Lender hereby authorizes and directs Administrative Agent to distribute any proceeds from Capital Calls or proceeds from the exercise of remedies under the Collateral Documents held by Administrative Agent to Lenders consistent with the terms of this **Section 14.3**.

14.4. Payments Set Aside. To the extent that any Credit Party makes a payment to Administrative Agent or any Lender, or Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then: (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Alternate Lender severally agrees to pay to Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

14.5. Waiver. No failure to exercise, and no delay in exercising, on the part of Administrative Agent or Lenders, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and Lenders hereunder and under the Loan Documents shall be in addition to all other rights provided by law. No modification or waiver of any provision of this Credit Agreement, the Notes or any of the other Loan Documents, nor consent to departure therefrom, shall be effective unless in writing and no such consent or waiver shall extend beyond the particular case and purpose involved. No notice or demand given in any case shall constitute a waiver of the right to take other action in the same, similar or other instances without such notice or demand. Subject to the terms of this Credit Agreement, including **Section 14.1**, Administrative Agent acting on behalf of all Lenders

(pursuant to the terms hereof), and the Credit Parties may from time to time enter into agreements amending or changing any provision of this Credit Agreement or the rights of Lenders or the Credit Parties hereunder, or may grant waivers or consents to a departure from the due performance of the obligations of the Credit Parties hereunder, any such agreement, waiver or consent made with such written consent of Administrative Agent being effective to bind all Lenders.

14.6. Payment of Expenses.

(a) Borrower agrees to pay (within ten (10) days after the receipt of written notice from Administrative Agent) all out-of-pocket costs and expenses of Administrative Agent (including without limitation Attorney Costs) reasonably incurred by it in connection with the negotiation, preparation, execution and delivery of this Credit Agreement, the Notes, and the other Loan Documents and any and all amendments, modifications and supplements thereof or thereto, and, subject to no gross negligence or willful misconduct on the part of the Lenders, all out-of-pocket costs and expenses of Administrative Agent and the Secured Parties (including, without limitation, the Attorney Costs of Administrative Agent's and the Secured Parties' legal counsel) reasonably incurred by them in connection with the preservation, enforcement and modification of, and Administrative Agent's and the Secured Parties' rights under, this Credit Agreement, the Notes, and the other Loan Documents.

(b) Borrower agrees to indemnify Administrative Agent and each of Lenders and their respective directors, officers, employees, attorneys and agents (each such Person, including without limitation Administrative Agent and each of the Secured Parties, being called an "**Indemnitee**") against, and to hold each Indemnitee harmless from, any and all losses, claims, actions, judgments, suits, disbursements, penalties, damages (other than consequential damages), liabilities and related expenses, including reasonable counsel fees and expenses, incurred by or asserted against any Indemnitee arising out of, in any way connected with, or as a result of:

(i) the execution and delivery of this Credit Agreement or any other Loan Document or any agreement or instrument contemplated thereby,

(ii) the use or misuse of the proceeds of the Loans,

(iii) the fraudulent actions or misrepresentations of any Credit Party or its Affiliates in connection with the transactions contemplated by this Credit Agreement and the other Loan Documents,

(iv) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, or

(v) any claim, litigation, investigation or proceeding relating to the Investor Documents, whether or not any Indemnitee is a party thereto;

provided, however, that such indemnity shall not, with respect to a particular Indemnitee, apply to any such losses, claims, actions, judgments, suits, disbursements, penalties, damages,

liabilities or related expenses to the extent arising from gross negligence or willful misconduct of such Indemnitee.

(c) Borrower will indemnify Administrative Agent and each of the Lenders against any costs or losses actually incurred as a result of any voluntary or involuntary prepayments of any Loans on any date which is not a Settlement Date under the Credit Agreement and against any increased costs or reduced return due to changes in applicable regulations regarding withholding taxes, reserves, capital adequacy, or other similar regulations.

(d) In addition to and without limiting the foregoing, the Credit Parties hereby indemnify and hold the Indemnitees harmless from and against, and agree to reimburse any Indemnitee on demand for, and agree to defend the Indemnitees against, any and all Environmental Damages (as hereinafter defined), incurred by Administrative Agent or a Lender. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNITEE WITH RESPECT TO ENVIRONMENTAL DAMAGES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (OR ANY OTHER) INDEMNITEE. HOWEVER, SUCH INDEMNITY SHALL NOT APPLY TO A PARTICULAR INDEMNITEE TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT PARTICULAR INDEMNITEE.**

The term "**Environmental Damages**" means all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including reasonable fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind or character, contingent or otherwise, matured or unmatured, known or unknown, direct or indirect, foreseeable or unforeseeable, made, incurred, suffered or brought at any time and from time to time and arising in whole or in part from:

(i) The presence of any Hazardous Material on any Property, or any escape, seepage, leakage, spillage, emission, release, discharge or disposal of any Hazardous Material on or from any Property, or the migration or release or threatened migration or release of any Hazardous Material to, from or through any Property; or

(ii) Any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Material by Borrower, or any party for whose actions Borrower is liable or in connection with any Property; or

(iii) The breach of any representation, warranty, covenant or agreement contained in **Section 9.16** (to the extent such breach relates to Environmental Requirements), **Section 9.18** or **Section 10.8** (to the extent such breach relates to Environmental Requirements), or **Section 11.8** of this Credit Agreement; or

(iv) Any violation of any Environmental Requirement, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; or

(v) Any Environmental Liability with respect to any Property, or the filing or imposition of any Environmental Lien against any Property, because of, resulting from, in connection with, or arising out of any of the matters referred to in subsections (i) through (iv) preceding.

(d) The provisions of this **Section 14.6** shall remain operative and in full force and effect regardless of the termination or expiration of the Availability Period, this Credit Agreement, or any other Loan Document, the consummation of the transactions contemplated hereby, the repayment of the Loans, the occurrence of the Maturity Date, the invalidity, illegality, or unenforceability of any term or provision of this Credit Agreement or any other Loan Document, or any investigation made by or on behalf of Lenders. All amounts due under this **Section 14.6** shall be payable promptly on written demand therefor.

14.7. **Notice.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing (except where telephonic instructions or notices are expressly authorized herein to be given) and shall be deemed to be effective: (a) if by hand delivery, telecopy or other facsimile transmission, on the day and at the time on which delivered to such party at the address or fax numbers specified below; (b) if by mail, on the day which it is received after being deposited, postage prepaid, in the United States registered or certified mail, return receipt requested, addressed to such party at the address specified below; or (c) if by FedEx or other reputable express mail service, on the next Business Day following the delivery to such express mail service, addressed to such party at the address set forth below; or (d) if by telephone, on the day and at the time reciprocal communication (i.e., direct communication between two or more persons, which shall not include voice mail messages) with one of the individuals named below occurs during a call to the telephone number or numbers indicated for such party below:

If to Borrower, Managing Member, Guarantor or Pledgor:

c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq.

If to Administrative Agent:

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, North Carolina 28255
Attention: Dan Hattendorf

Telephone: (704) 388-3113
Facsimile: (704) 388-9211

With a copy to:

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, NC 28255
Attention: Brian Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215

If to Lenders:

At the address and numbers set forth on **Schedule 14.7**.

Any party may change its address for purposes of this Credit Agreement by giving notice of such change to the other parties pursuant to this **Section 14.7**. With respect to any notice received by Administrative Agent from any Credit Party or any Investor not otherwise addressed herein, Administrative Agent shall notify Lenders promptly of the receipt of such notice, and shall provide copies thereof to Lenders. When determining the prior days notice required for any Loan Notice, Request for Letter of Credit, or other notice to be provided by a Credit Party, any Qualified Borrower or an Investor hereunder, the day the notice is delivered to Administrative Agent (or such other applicable Person) shall not be counted, but the day of the related Borrowing, issuance of Letter of Credit, or other relevant action shall be counted.

14.8. GOVERNING LAW. PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO THE CHOICE OF LAW PRINCIPLES THAT MIGHT OTHERWISE APPLY, EXCEPT TO THE EXTENT THE LAWS OF ANOTHER JURISDICTION GOVERN THE CREATION, PERFECTION, VALIDITY, OR ENFORCEMENT OF LIENS UNDER THE COLLATERAL DOCUMENTS, AND THE APPLICABLE FEDERAL LAWS OF THE UNITED STATES OF AMERICA, SHALL GOVERN THE VALIDITY, CONSTRUCTION, ENFORCEMENT AND INTERPRETATION OF THIS CREDIT AGREEMENT AND ALL OF THE OTHER LOAN DOCUMENTS.

14.9. Choice of Forum; Consent to Service of Process and Jurisdiction; Waiver of Trial by Jury. Any suit, action or proceeding against any Credit Party with respect to this Credit Agreement, the Notes or the other Loan Documents or any judgment entered by any court in respect thereof, may be brought in the courts of the State of New York, or in the United States Courts located in the Borough of Manhattan in New York City, pursuant to *Section 5-1402* of the New York General Obligations Law, as Lenders in their sole discretion may elect and each Credit Party hereby irrevocably submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding. Each Credit Party hereby irrevocably consents to

the service of process in any suit, action or proceeding in said court by the mailing thereof by Administrative Agent by registered or certified mail, postage prepaid, to the applicable address set forth in **Section 14.7**. Each Credit Party hereby irrevocably waives any objections which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Credit Agreement or the Notes brought in the courts located in the State of New York, Borough of Manhattan in New York City, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HERETO HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS CREDIT AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY

14.10. Invalid Provisions. If any provision of this Credit Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Credit Agreement, such provision shall be fully severable and this Credit Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Credit Agreement, and the remaining provisions of this Credit Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Credit Agreement, unless such continued effectiveness of this Credit Agreement, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Credit Agreement shall conflict with or be inconsistent with any provision of any of the other Loan Documents, then the terms, conditions and provisions of this Credit Agreement shall prevail.

14.11. Entirety and Amendments. The Loan Documents embody the entire agreement between the parties and supersede all prior agreements and understandings, if any, relating to the subject matter hereof and thereof, and this Credit Agreement and the other Loan Documents may be amended only by an instrument in writing executed by the parties hereto in accordance with the terms hereof.

14.12. Successors and Assigns.

(a) The provisions of this Credit Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Credit Parties nor any Qualified Borrower may assign or otherwise transfer any of their respective rights or obligations hereunder without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except: (i) to an Eligible Assignee in accordance with the

provisions of **clause (b)** of this **Section 14.12**; (ii) by way of participation in accordance with the provisions of **clause (f)** of this **Section 14.12**; or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **clause (h)** of this **Section 14.12** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Credit Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **clause (f)** of this **Section 14.12**, and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Credit Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees (each, an “**Assignee**”) all or a portion of its rights and obligations under this Credit Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this **clause (b)**, participations in Letter of Credit Liability) at the time owing to it); provided that: (i) except in the case of an assignment of the entire remaining amount of the assigning Lender’s Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) subject to each such assignment, determined as of the date the Assignment and Assumption Agreement with respect to such assignment is delivered to Administrative Agent or, if “**Trade Date**” is specified in the Assignment and Assumption Agreement, as of the Trade Date, shall not be less than \$2,500,000, and, after such assignment, no Lender shall hold a Commitment of less than \$5,000,000; (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Credit Agreement with respect to the Loans or the Commitment assigned; (iii) any assignment of a Commitment must be approved by Administrative Agent, the Letter of Credit Issuer, and, unless an Event of Default exists and is continuing, Borrower (such approval, in each case, not to be unreasonably withheld or delayed), unless the Person that is the proposed assignee is itself a Program Support Provider or a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); (iv) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption Agreement, together with a processing and recordation fee as set forth on **Schedule 14.12(b)** (except in the case of a transfer at the demand of Borrower under **Section 14.12** hereof, in which case either Borrower or the transferee Lender shall pay such fee); and (v) each assignment made as a result of a demand by Borrower under **Section 14.12** hereof shall be arranged by Borrower after consultation with Administrative Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Credit Agreement or an assignment of a portion of such rights and obligations made concurrently with another assignment or assignments that together constitute an assignment of all of the rights and obligations of the assigning Lender. Subject to acceptance and recording thereof by Administrative Agent pursuant to **clause (e)** of this **Section 14.12**, from and after the effective date specified in each Assignment and Assumption Agreement, the Eligible Assignee thereunder shall be a party to this Credit Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Lender

under this Credit Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Credit Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Lender's rights and obligations under this Credit Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of **Sections 4.1, 4.4, 4.5 and 14.6** with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, each applicable Borrower Party (at its expense) shall execute and deliver a Note to the Managing Agent of the assignee, and the applicable existing Note or Notes shall be returned to the applicable Borrower Party. Any assignment or transfer by a Lender of rights or obligations under this Credit Agreement that does not comply with this subsection shall be treated for purposes of this Credit Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **clause (f)** of this **Section 14.12**.

(c) Without limiting the foregoing, a Conduit Lender may, from time to time, with prior or concurrent notice to Borrower and the Administrative Agent, in one transaction or a series of transactions, assign all or a portion of its interest in the Principal Obligation and its rights and obligations under this Agreement and any other Loan Documents to which it is a party to a Conduit Assignee. Upon and to the extent of such assignment by the Conduit Lender to a Conduit Assignee, (i) such Conduit Assignee shall be the owner of the assigned portion of the Principal Obligation, (ii) the related administrator for such Conduit Assignee will act as the Administrator for such Conduit Assignee, with all corresponding rights and powers, express or implied, granted to the Administrator hereunder or under the other Loan Documents, (iii) such Conduit Assignee (and any related commercial paper issuer, if such Conduit Assignee does not itself issue commercial paper) and their respective Program Support Provider(s) and other related parties shall have the benefit of all the rights and protections provided to the Conduit Lender and its Program Support Provider(s) herein and in the other Loan Documents (including any limitation on recourse against such Conduit Assignee or related parties, any agreement not to file or join in the filing of a petition to commence an insolvency proceeding against such Conduit Assignee, and the right to assign to another Conduit Assignee as provided in this paragraph), (iv) such Conduit Assignee shall assume all (or the assigned or assumed portion) of the Conduit Lender's obligations, if any, hereunder or any other Loan Document, and the Conduit Lender shall be released from such obligations, in each case to the extent of such assignment, and the obligations of the Conduit Lender and such Conduit Assignee shall be several and not joint, (v) all distributions in respect of the Principal Obligation assigned shall be made to the applicable Managing Agent, on behalf of the Conduit Lender and such Conduit Assignee on a *pro rata* basis according to their respective interests, (vi) the definition of the term "CP Rate" with respect to the portion of the Principal Obligation funded with commercial paper issued by the Conduit Lender from time to time shall be determined in the manner set forth in the definition of "CP Rate" applicable to the Conduit Lender on the basis of the interest rate or discount applicable to commercial paper issued by such Conduit Assignee (or the related commercial paper issuer, if such Conduit Assignee does not itself issue commercial paper) rather than the Conduit Lender, (vii) the defined terms and other terms and provisions of this Credit Agreement and the other Loan Documents shall be

interpreted in accordance with the foregoing, and (viii) if requested by the Managing Agent or Administrator with respect to the Conduit Assignee, the parties will execute and deliver such further agreements and documents and take such other actions as the Managing Agent or such Administrator may reasonably request to evidence and give effect to the foregoing. No assignment by the Conduit Lender to a Conduit Assignee of all or any portion of its interest in the Principal Obligation shall in any way diminish the related Alternate Lenders' obligation under **Section 2.3** to fund any Loan not funded by the Conduit Lender or such Conduit Assignee or to acquire from the Conduit Lender or such Conduit Assignee all or any portion of its interest in the Principal Obligation pursuant to **Section 7.1**.

(d) In the event that a Conduit Lender makes an assignment to a Conduit Assignee in accordance with **clause (c)** above, the related Alternate Lenders: (i) if requested by the related Administrator, shall terminate their participation in the applicable Program Support Agreement to the extent of such assignment, (ii) if requested by the related Administrator, shall execute (either directly or through a participation agreement, as determined by such Administrator) the program support agreement related to such Conduit Assignee, to the extent of such assignment, the terms of which shall be substantially similar to those of the participation or other agreement entered into by such Alternate Lender with respect to the applicable Program Support Agreement (or which shall be otherwise reasonably satisfactory to the related Administrator), (iii) if requested by such Conduit Lender, shall enter into such agreements as requested by the Conduit Lender pursuant to which they shall be obligated to provide funding to such Conduit Assignee on the same terms and conditions as is provided for in this Agreement in respect of such Conduit Lender (or which agreements shall be otherwise reasonably satisfactory to Borrower and such Conduit Lender), and (iv) shall take such actions as the Administrator shall reasonably request in connection therewith.

(e) Administrative Agent, acting solely for this purpose as an agent of the Credit Parties, shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption Agreement delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and Letter of Credit Liability owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and each Credit Party, Administrative Agent, Agents and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Credit Agreement. The Register shall be available for inspection and copying by the Credit Parties, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Upon the consummation of any assignment in accordance with this **Section 14.12, Schedule 14.12(b)** shall automatically be deemed amended (to the extent required) by Administrative Agent to reflect the name and address of the applicable Assignee.

(f) Any Lender may at any time, without the consent of, or notice to, any Credit Party or Administrative Agent, sell participations to any Person (other than a natural person or any Credit Party or any Affiliate thereof) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Credit Agreement

(including all or a portion of its Commitment and/or the Loans (including such Lender's participations in Letter of Credit Liability) owing to it); provided that: (i) such Lender's obligations under this Credit Agreement shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) each Credit Party, Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Credit Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Credit Agreement and to approve any amendment, modification or waiver of any provision of this Credit Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in **Section 14.1(a), 14.1(b)(ii) or 14.1(b)(v)** that directly affects such Participant. Subject to **clause (g)** of this **Section 14.12**, each Borrower Party agrees that each Participant shall be entitled to the benefits of **Sections 4.1, 4.4 and 4.5** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **clause (b)** of this **Section 14.12**. To the extent permitted by law, each Participant also shall be entitled to the benefits of the right of setoff under application law as though it were a Lender, provided such Participant agrees to be subject to **Sections 14.2 and 14.3** as though it were a Lender.

(g) A Participant shall not be entitled to receive any greater payment under **Sections 4.1 or 4.4** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent.

(h) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Credit Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(i) Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to **clause (b)** above, Bank of America may, upon thirty (30) days' notice to the Borrower Parties and the Lenders, resign as Administrative Agent and Letter of Credit Issuer. In the event of any such resignation, Lenders shall appoint from among the Lenders a successor Administrative Agent and Letter of Credit Issuer hereunder (subject, except when an Event of Default exists, to the consent of Borrower, not to be unreasonably withheld); *provided, however*, that no failure by Lenders to appoint any such successor shall affect the resignation of Bank of America as Letter of Credit Issuer and Administrative Agent. If Bank of America resigns as Letter of Credit Issuer and Administrative Agent, it shall retain all the rights and obligations of the Letter of Credit Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Letter of Credit Issuer and all Letter of Credit Liability with respect thereto (including the right to

require the Lenders to fund payment of any amount drawn under a Letter of Credit issued by Bank of America as Letter of Credit Issuer hereunder.

14.13. **Lender Default.** If for any reason any Lender shall fail or refuse to abide by its obligations hereunder, and such Lender shall not have cured such failure or refusal within five (5) Business Days of its occurrence (a “**Lender Default**”), then, in addition to the rights and remedies that may be available to Administrative Agent, Lenders, or any Borrower Party at law or in equity, such Lender’s right to vote on matters related to this Credit Agreement, and to participate in the administration of the Loans, the Letters of Credit, and this Credit Agreement, shall be suspended. Administrative Agent shall have the right, but not the obligation, in its sole discretion, to acquire at par all of such Lender’s Commitment, including its Pro Rata Share in the Obligations under this Credit Agreement. In the event that Administrative Agent does not exercise its right to so acquire all of such Lender’s interests, then each Lender that is not a Defaulting Alternate Lender (each, a “**Current Party**”) shall then, thereupon, have the right, but not the obligation, in its sole discretion to acquire at par (or if more than one Current Party exercises such right, each Current Party shall have the right to acquire, *pro rata*) such Lender’s Commitment, including its Pro Rata Share in the outstanding Obligations under this Credit Agreement.

14.14. **Replacement of Lender.** Following a demand by an Alternate Lender for payment of any amounts under **Section 4.1** or **4.3**, or if any Alternate Lender is a Defaulting Alternate Lender (in either case, an “**Affected Lender**”), Borrower may elect to replace such Affected Lender as an Alternate Lender party to this Credit Agreement with an Eligible Assignee procured by Borrower, *provided* that no Potential Default nor Event of Default shall have occurred and be continuing at the time of such replacement, and *provided further* that, concurrently with such replacement such Eligible Assignee shall agree to purchase for cash the Loans and other Obligations due to the Affected Lender pursuant to an Assignment and Assumption Agreement and to become an Alternate Lender for all purposes under this Credit Agreement and to assume all obligations of the Affected Lender to be terminated as of such date. Any such Affected Lender shall assign its rights and interests hereunder, such assignment to be effected in compliance with the requirements of **Section 14.12(b)** hereof. In the event that such an assignment occurs, the Eligible Assignee (i) if requested by the applicable Administrator, shall execute (either directly or through a participation agreement, as determined by the Administrator) a Program Support Agreement related to the applicable Conduit Lender, to the extent of such assignment, the terms of which shall be substantially similar to those of the participation or other agreement by the assigning Alternate Lender with respect to the applicable Program Support Agreement (or which shall be otherwise reasonably satisfactory to the applicable Administrator), and (ii) shall take such actions as the Agents shall reasonably request in connection therewith.

14.15. **Maximum Interest.** Regardless of any provision contained in any of the Loan Documents, Lenders shall never be entitled to receive, collect or apply as interest on the Obligations any amount in excess of the Maximum Rate, and, in the event that Lenders ever receive, collect or apply as interest any such excess, the amount which would be excessive interest shall be deemed to be a partial prepayment of principal and treated hereunder as such; and, if the principal amount of the Obligations is paid in full, any remaining excess shall forthwith be paid to the applicable Borrower Party. In determining whether or not the interest

paid or payable under any specific contingency exceeds the Maximum Rate, each Borrower Party and Lenders shall, to the maximum extent permitted under applicable law: (a) characterize any nonprincipal payment as an expense, fee or premium rather than as interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread, in equal parts, the total amount of interest throughout the entire contemplated term of the Obligations so that the interest rate does not exceed the Maximum Rate; *provided that*, if the Obligations are paid and performed in full prior to the end of the full contemplated term thereof, and if the interest received for the actual period of existence thereof exceeds the Maximum Rate, Lenders shall refund to the applicable Borrower Party the amount of such excess or credit the amount of such excess against the principal amount of the Obligations and, in such event, Lenders shall not be subject to any penalties provided by any laws for contracting for, charging, taking, reserving or receiving interest in excess of the Maximum Rate. As used herein, the term “*applicable law*” shall mean the law in effect as of the date hereof; *provided, however*, that in the event there is a change in the law which results in a higher permissible rate of interest, then the Loan Documents shall be governed by such new law as of its effective date.

14.16. **Headings.** Section headings are for convenience of reference only and shall in no way affect the interpretation of this Credit Agreement.

14.17. **Survival.** All representations and warranties made by the Credit Parties and the Qualified Borrowers herein shall survive delivery of the Notes, the making of the Loans and the issuance of the Letters of Credit.

14.18. **Integration.** This Credit Agreement is intended by the parties as the final, complete and exclusive statement of the transactions evidenced by this Credit Agreement. All prior or contemporaneous promises, agreements and understandings, whether oral or written, are deemed to be superseded by this Credit Agreement, and no party is relying on any promise, agreement or understanding not set forth in this Credit Agreement.

14.19. **Limited Liability of Investors.** Except with respect to any expenses and losses arising from any Credit Party’s intentional misrepresentation hereunder, fraud or willful misapplication of proceeds in contravention of this Credit Agreement, for which there shall be full recourse to such Credit Party, none of the Investors, including the Managing Member, shall have any personal, partnership, corporate or trust liability for the payment or performance of the Obligations. Nothing contained in this **Section 14.19** or in any of the other provisions of the Loan Documents shall be construed to limit, restrict, or impede the obligations, the liabilities, and indebtedness of Borrower, or of any Investor to make its Capital Contributions to Borrower, Managing Member, Guarantor or Pledgor, in accordance with the terms of the Operating Agreement, Partnership Agreement or the Stockholders Agreement, as applicable, or pursuant to the terms of such Investor’s Investor Letter. Nothing contained in this **Section 14.19** shall be deemed to expressly or implicitly limit or modify the liability of each Qualified Borrower to Lenders under the Qualified Borrower Notes; *provided, however*, that such liability shall not extend beyond such Qualified Borrower and its properties and assets. Notwithstanding anything contained in this **Section 14.19**, the payment and performance of the Obligations shall be fully recourse to each Borrower Party and the payment and performance of the Guaranteed Obligations shall be fully recourse to the Guarantor and, in each case, their properties and assets.

14.20. **Confidentiality.** Administrative Agent, each Managing Agent, each Administrator and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed: (a) to its and its Affiliates' respective partners, directors, officers, employees, representatives, advisors and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential and to use such Information only in connection with this facility); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Credit Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Credit Agreement or the enforcement of rights hereunder; (f) subject to an agreement containing provisions substantially the same as those of this **Section 13.21**, to: (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Credit Agreement; or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of the Borrower Parties; (g) with the consent of the applicable Borrower; (h) to the extent such Information: (x) becomes publicly available other than as a result of a breach of this **Section 14.20** or (y) becomes available to Administrative Agent, any Managing Agent, any Administrator or any Lender on a nonconfidential basis from a source other than a Credit Party; or (i) to the National Association of Insurance Commissioners or any other similar organization or any rating agency, Commercial Paper dealer, provider of credit enhancement or liquidity to such Conduit Lender or any Person providing financing to, or holding equity interest in, such Conduit Lender, any Program Support Provider, any Conduit Collateral Agent and to any officers, directors, employees, outside accountants and attorneys of any of the foregoing, *provided* that such recipient has been advised of the confidential nature of such information and agrees to be bound by the provisions of this **Section 14.20**. For the purposes of this **Section 14.20**, "**Information**" means all information received from any Credit Party, other than any such information that is available to Administrative Agent, any Managing Agent, any Administrator or any Lender on a nonconfidential basis prior to disclosure by such Person; *provided that*, in the case of information received from any Credit Party after the date hereof, such information is clearly identified in writing at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 14.20** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Administrative Agent, Arranger, each Lender and Agent agrees not to disclose the identity of the Investors in connection with any public disclosure of the transaction contemplated hereby, such as in tombstones or marketing materials.

14.21. **USA PATRIOT Act Notice.** Each Lender and each Agent (for itself and not on behalf of any Lender) hereby notifies the Credit Parties that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Act**"), it is required to obtain, verify and record information that identifies the Credit Parties, which information includes the name and address of the Credit Parties and other information that will allow such Lender or Agent, as applicable, to identify the Credit Parties in accordance with the Patriot Act.

14.22. **Multiple Counterparts.** This Credit Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same agreement, and any of the parties hereto may execute this Credit Agreement by signing any such counterpart.

14.23. **No Bankruptcy Petition Against any Conduit Lender.** Each Credit Party hereby covenants and agrees that, prior to the date which is one year and one day after the payment in full of all outstanding Commercial Paper or other rated indebtedness of a Conduit Lender, it will not institute against, or encourage, cooperate with or join any other Person in instituting against, such Conduit Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the law of the United States or any state of the United States. The provisions of this **Section 14.23** shall survive the termination of this Credit Agreement.

14.24. **No Recourse Against any Conduit Lender.** Notwithstanding anything to the contrary contained in this Credit Agreement, the obligations of each Conduit Lender under this Credit Agreement and all other Loan Documents are solely the corporate obligations of such Conduit Lender and shall be payable solely to the extent of funds received by such Conduit Lender from the Credit Parties in accordance herewith or from any party to any Loan Document in accordance with the terms thereof in excess of funds necessary to pay such Conduit Lender's matured and maturing Commercial Paper or other rated indebtedness and, to the extent funds are not available to pay such obligations, the claims relating thereto shall not constitute a claim against such Conduit Lender but shall continue to accrue. The payment of any claim (as defined in Section 101 of *Title 11* of the Bankruptcy Code) of any party to this Credit Agreement or any other Loan Document against a Conduit Lender shall be subordinated to the payment in full of all of such Conduit Lender's Commercial Paper and other rated indebtedness. No recourse under or with respect to any obligation, covenant or agreement of any Conduit Lender as contained in this Credit Agreement or any other agreement, instrument or document entered into by it pursuant hereto or in connection herewith shall be had against any manager or administrator of such Person or any incorporator, stockholder, member, officer, employee or director of such Person or of any such manager or administrator, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES FOLLOW.**

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed as of the day and year first above written.

BORROWER:

ACADIA STRATEGIC OPPORTUNITY FUND III LLC,
a Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

MANAGING MEMBER:

ACADIA REALTY ACQUISITION III LLC,
a Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

PLEDGOR:

ACADIA INVESTORS III, INC.,
a Maryland corporation

By: _____
Name: Robert Masters
Title: Senior Vice President

GUARANTOR:

ACADIA REALTY LIMITED PARTNERSHIP,
a Delaware limited partnership

By: **ACADIA REALTY TRUST,**
its General Partner

By: _____
Name: Robert Masters
Title: Senior Vice President

ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A., as
Administrative Agent

By: _____
Name:
Title

Signature Page to Revolving Credit Agreement

MANAGING AGENT AND ADMINISTRATOR:

BANK OF AMERICA, N.A., as Managing Agent for the YC
SUSI Lender Group and as Administrator for YC SUSI Trust

By: _____
Name: _____
Title: _____

Signature Page to Revolving Credit Agreement

LENDERS:

BANK OF AMERICA, N.A.,

as an Alternate Lender for the YC SUSI Lender Group

By: _____

Name: _____

Title: _____

Signature Page to Revolving Credit Agreement

YC SUSI TRUST, as Conduit Lender

By: _____
Name: _____
Title: _____

Signature Page to Revolving Credit Agreement

COMMITMENTS

Alternate Lender	Commitment
Bank of America, N.A.	\$75,000,000

Schedule to Revolving Credit Agreement

ADDRESSES

Bank of America

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, North Carolina 28255
Attention: Dan Hattendorf
Telephone: (704) 388-3113
Facsimile: (704) 388-9211

With copy to:

Bank of America, N.A., as Administrative Agent
NC1-027-19-01
214 North Tryon Street
Charlotte, NC 28255
Attention: Brian Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215

YC SUSI Trust

YC SUSI Trust
c/o Bank of America, N.A.
NC1-027-19-01
214 North Tryon Street
Charlotte, North Carolina 28255
Attention: Dan Hattendorf
Telephone: (704) 388-3113
Facsimile: (704) 388-9211

With copy to:

YC SUSI Trust
c/o Bank of America, N.A.
NC1-027-19-01
214 North Tryon Street
Charlotte, NC 28255
Attention: Brian Williams
Telephone: (704) 683-4747
Telecopy: (704) 968-1215

Schedule to Revolving Credit Agreement

PROCESSING AND RECORDATION FEES

The Administrative Agent will charge the applicable Lenders a processing and recordation fee (an “**Assignment Fee**”) in the amount of \$2,500 for each assignment; *provided, however*, that in the event of two or more concurrent assignments to members of the same Assignee Group (which may be effected by a suballocation of an assigned amount among members of such Assignee Group) or two or more concurrent assignments by members of the same Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group), the Assignment Fee will be \$2,500 plus the amount set forth below:

Transaction	Assignment Fee
First four concurrent assignments or suballocations to members of an Assignee Group (or from members of an Assignee Group, as applicable)	-0-
Each additional concurrent assignment or suballocation to a member of such Assignee Group (or from a member of such Assignee Group, as applicable)	\$500

Schedule to Revolving Credit Agreement

ACADIA TARRYTOWN LLC,
formerly known as
Acadia-Noddle Tarrytown Development Co., LLC

TO

ANGLO IRISH BANK CORPORATION PLC

MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

Dated: As of October 30, 2007
Location: 124-134 Wildey Street
County: Westchester
Town: Greenburgh
Village: Tarrytown
Section: 1
Sheet: 2
Lots: P25 and P25B

RECORD AND RETURN TO:

Sullivan & Worcester LLP
1290 Avenue of the Americas
New York, New York 10104
Attention: Hugh P. Finnegan, Esq.

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Signature of Mortgagor
Acknowledgment(s)

MORTGAGE CONSOLIDATION AND MODIFICATION AGREEMENT

This Mortgage Consolidation and Modification Agreement, dated as of this 30th day of October, 2007, is made by ACADIA TARRYTOWN LLC, formerly known as Acadia-Noddle Tarrytown Development Co., LLC, a New York limited liability company, having an address at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue, Suite 260, White Plains, New York 10605, ("Mortgagor") in favor of ANGLO IRISH BANK CORPORATION PLC, a banking corporation organized under the laws of the Republic of Ireland having its principal place of business at Stephen Court, 18/21 St. Stephen's Green, Dublin 2, Ireland ("Mortgagee").

RECITALS:

WHEREAS, Mortgagor is the owner of the fee estate in the premises described in Exhibit A attached hereto (the "Premises") and Mortgagee is the owner and holder of certain mortgages covering the fee estate of Mortgagor in the Premises, as more particularly described in Exhibit C attached hereto (collectively, the "Existing Mortgages") and of the notes, bonds or other obligations secured thereby, as more particularly described in Exhibit C attached hereto (collectively, the "Existing Notes");

WHEREAS, there is, prior to the execution of the note and the mortgage dated the date hereof, presently owing on the Existing Notes and the Existing Mortgages the principal balance of \$1,859,478.61 and interest;

WHEREAS, Mortgagor and Mortgagee have agreed in the manner hereinafter set forth (a) to spread the Existing Mortgages and the respective liens thereof over those portions of the Mortgaged Property not already covered thereby, if any, and (b) to modify the terms and provisions of the Existing Mortgages;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Mortgagor hereby represents and warrants to and covenants and agrees with Mortgagee as follows:

Section 1. Definitions. Each reference in this Mortgage to the following terms shall be deemed to have the following meaning:

Bankruptcy Code: The federal bankruptcy code, 11 U.S.C. § 101 et seq., as the same now exists or may hereafter be amended.

Collateral: Collectively, the Personal Property, the Proceeds, the Leases, Rents and Security Deposits.

Commitment Letter: Mortgagee's term sheet, dated September 6, 2007, setting forth the general terms of the Loan.

Continuing Expenses: Normal operating expenses of the Mortgaged Property that are incurred during the period of any loss due to a casualty with respect to the Mortgaged Property.

Cost to Repair: The term “Cost to Repair” is defined in Section 5.3.9 hereof.

Default Condition: The existence of any Event of Default or the existence of any condition or state of facts which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

Default Rate: The rate of interest payable under the Note at maturity or upon the occurrence of an Event of Default.

Deposited Funds: Any and all sums deposited with Mortgagee pursuant to Section 5.5 hereof for payment of Impositions and insurance premiums.

Environmental Site Assessment Report: The report, dated October 9, 2007 prepared by ATC Associates Inc. and provided to Mortgagee in connection with the Loan.

Event of Default: Any event of default listed in Section 8 hereof.

Existing Mortgages: The term “Existing Mortgages” is defined in the Recitals.

Existing Notes: The term “Existing Notes” is defined in the Recitals.

Guarantor: The term “Guarantor” shall mean Acadia Strategic Opportunity Fund, LP.

Guaranty Documents: The term “Guaranty Documents” shall collectively mean that certain Non-Recourse Carve Out Guaranty Agreement, dated the date hereof, executed by Mortgagor and Guarantor in favor of Mortgagee and that certain Environmental Indemnity Agreement, dated the date hereof, executed by Mortgagor and Guarantor in favor of Mortgagee.

Governmental Authority: Each and every national, state and local governmental body, department, agency or subdivision having jurisdiction over Mortgagor, any Guarantor or the Mortgaged Property or any part thereof or any use, operation or occupancy thereof.

Hazardous Waste: Any “oil,” “hazardous material,” “hazardous wastes” or “hazardous substances” as defined in the Hazardous Waste Laws, including, without limitation (whether or not included in the definition contained in the Hazardous Waste Laws), PCBs, asbestos, radon and other chemicals which would be materially dangerous to the environment or to human beings.

Hazardous Waste Laws: Collectively, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of remediation or prevention of releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment,

including, but not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

Hedging Agreement: The term "Hedging Agreement" shall mean any swap, collar, option or similar contract entered into or to be entered into between the Mortgagor and the Mortgagee in connection with the Loan.

Impositions: Any and all taxes, assessments, water and sewer charges, and other charges of whatever nature which may at any time be assessed against, levied upon or constitute a lien on the whole or any part of the Mortgaged Property, or which otherwise might become a lien prior to this Mortgage or otherwise have priority in the distribution of the proceeds of a judicial sale, and any and all interest, costs or penalties with respect to any and all unpaid taxes, assessments or charges.

Improvements: Any and all buildings and improvements now or hereafter located on the Premises.

Lease: Each and every agreement providing for use or occupancy of all or any part of the Mortgaged Property, whether written or oral, whether now existing or hereafter arising, and any and all amendments, renewals and extensions thereof including all guaranties thereof.

Lessee: Any tenant pursuant to a Lease.

Licenses: Any and all franchises, licenses and permits whether issued by a Governmental Authority or otherwise, relating to construction on the Premises or any part thereof, or the use, operation or occupancy of the Premises and Improvements or any part thereof or any business conducted thereon.

Loan: The loan evidenced by the Note.

Loan Documents: Collectively, the Note, the Security Instruments and the Other Documents.

Mortgage: The term "Mortgage" is defined in Section 2.2 hereof.

Mortgaged Property: The term "Mortgaged Property" as defined in Section 2.1 hereof.

Net Proceeds: The net amount of all insurance proceeds received by Mortgagee pursuant to the provisions of this Mortgage as a result of damage or destruction of the Mortgaged Property, after deducting Mortgagee's reasonable costs and expenses, if any, in collecting the same available for the repair and restoration of the Improvements.

Note: The term "Note" means that certain Note Consolidation and Modification Agreement, dated the date hereof, executed by Mortgagor in favor of Mortgagee in the principal amount of up to \$9,800,000.00.

Obligations: The term "Obligations" as defined in Section 3 hereof.

Other Documents: Any document, instrument or agreement now or hereafter securing the Note or executed by Mortgagor or any Other Liable Party in connection with the Loan, other than the Note and the Security Instruments, including, without limitation, any Hedging Agreement.

Other Liable Party: Each and every person, corporation, limited liability company, partnership or other entity (other than Mortgagor) now or hereafter liable, absolutely or contingently, for the whole or any part of the indebtedness evidenced by the Note, including, without limitation, the Guarantor.

Permitted Encumbrances: The liens and encumbrances, if any, listed on **Exhibit B** attached hereto and incorporated herein by reference and any real estate taxes and assessments with respect to the Premises and Improvements to the extent that the same are not yet due and payable.

Permitted Use: Retail uses permitted by applicable law.

Personal Property: Any and all fixtures, machinery, equipment and other personal property of every kind, now or hereafter located in or upon or affixed to the Premises or Improvements, or any part thereof, or now or hereafter used or to be used in connection with any present or future operation of the Premises or Improvements, or any part thereof, and now owned or hereafter acquired by Mortgagor, or in which Mortgagor now or hereafter has an interest, including, without limitation, any and all (i) heating, lighting, incinerating, refrigerating, ventilating, air conditioning, air cooling, lifting, fire extinguishing, plumbing, cleaning, communications and power equipment and apparatus, (ii) gas, water and electrical equipment, (iii) elevators, escalators, switchboards, engines, motors, tanks, pumps, partitions, conduits, ducts and compressors, (iv) electrical and/or gas appliances, incinerators, carpeting, furniture and furnishings, draperies, storm windows and doors, and screens and awnings and (v) Licenses; and any and all renewals of, replacements, accessions or additions to, substitutions for and proceeds of any and all of the foregoing.

Premises: The term "Premises" is defined in the Recitals.

Proceeds: Any and all proceeds payable or paid for or with respect to any or as a result of damage or loss to the Premises, Improvements and Personal Property, or any part thereof,

including, without limitation, insurance proceeds, and all awards in connection with any condemnation or other taking of the Premises, Improvements and Personal Property, or any part thereof, or for conveyance in lieu thereof.

Rents: Any and all rents and other payments of every kind due or payable and to become due or payable to Mortgagor by virtue of the Leases, or otherwise due or payable and to become due or payable to Mortgagor as the result of any use, possession or occupancy of all or any part of the Mortgaged Property.

Security Deposits: All tenant security deposits held by or deposited with Mortgagor or Mortgagee in connection with any of the Leases, whether in the form of cash, letter of credit or otherwise.

Security Instruments: (i) this Mortgage, (ii) an Assignment of Leases and Rents from Mortgagor to Mortgagee of even date herewith, (iii) any guaranty or indemnity of the obligations of Mortgagor under the Note or any of the other Loan Documents and (iv) the UCC-1 Financing Statements perfecting the security interest granted herein.

Section 2. Consolidation; Spreader; Granting Clause.

2.1. The Existing Mortgages and the respective liens thereof are hereby spread over those portions of the Mortgaged Property not already covered thereby, and for consideration paid and for other good and valuable consideration, the receipt and legal adequacy of which are hereby acknowledged, Mortgagor hereby grants, bargains, sells, conveys, transfers and assigns to Mortgagee, its successors and assigns, forever, WITH MORTGAGE COVENANTS, and Mortgagor hereby grants to Mortgagee, its successors and assigns a security interest in and to all of Mortgagor's right, title and interest, if any, in the following property, rights and interests (such property, rights and interests being heretofore and hereinafter collectively referred to as the "Mortgaged Property"):

(i) the Premises;

(ii) the Improvements;

(iii) the Personal Property;

(iv) any and all easements, rights of way, privileges, hereditaments and appurtenances now or hereafter belonging to or inuring to the benefit of the Premises and/or Improvements or any part thereof, all right, title and interest of Mortgagor in and to the land lying within any street or roadway adjoining the Premises or any part thereof, and all right, title and interest of Mortgagor in and to any now or hereafter vacated streets or roads adjoining the Premises or any part thereof;

(v) any and all issues, benefits and profits of the Premises and/or Improvements;

(vi) the Leases, Rents and Security Deposits;

(vii) the Proceeds;

(viii) the Deposited Funds;

(ix) any and all records and books of account now or hereafter maintained by Mortgagor in connection with the operation of the Premises, Improvements and Personal Property or any part thereof;

(x) all of Mortgagor's right, title and interest in and to any name under which the Premises and/or Improvements may at any time be operated and any variation thereof and the goodwill of Mortgagor in connection herewith or therewith;

(xi) all of Mortgagor's right, title and interest in and to any Hedging Agreement.

All of which Premises, Improvements, Personal Property and other property hereby granted, sold and conveyed, or intended so to be, are collectively referred to as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property unto and to the use of Mortgagee, its successors and assigns forever.

2.2. The Existing Mortgages and the respective liens thereof, as so spread, constitute in law but one mortgage, a single first mortgage lien, covering the Mortgaged Property and securing the principal sum of up to \$9,800,000.00, together with interest thereon as hereinafter provided (the Existing Mortgages, as modified, amended, restated, ratified and confirmed pursuant to the provisions of this Mortgage hereinafter set forth, being hereinafter collectively referred to as the "Mortgage").

2.3. The terms, covenants and provisions of the Mortgage are hereby modified, amended and restated in their entirety so that henceforth the terms, covenants and provisions of the Mortgage shall read the same as the paragraphs set forth herein, and the Mortgage, as so modified, amended and restated, is hereby ratified and confirmed in all respects by Mortgagor.

2.4. Mortgagor represents, warrants and covenants that there are no offsets, counterclaims or defenses against the Note or this Mortgage and that Mortgagor (and the undersigned representative of Mortgagor) has full power, authority and legal right to execute this Mortgage and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be observed and performed.

Section 3. Obligations Secured.

This conveyance is made to secure the following obligations (collectively, the "Obligations"):

(i) Payment of the indebtedness of Mortgagor to Mortgagee evidenced by the Note;

(ii) payment by Mortgagor to Mortgagee of any and all sums expended or advanced by Mortgagee pursuant to any term or provision of this Mortgage;

(iii) performance and observance by Mortgagor of each and every covenant, condition and obligation contained in the Note, this Mortgage, the other Security Instruments and any other document, instrument or agreement now or hereafter given by Mortgagor as additional security for the payment of the indebtedness hereby secured, or otherwise executed in connection therewith;

(iv) payment by Mortgagor to Mortgagee of any and all sums expended or advanced by Mortgagee pursuant to any term or provision of any Hedging Agreement entered into between Mortgagor and Mortgagee; and

(v) performance and observance by Mortgagor of every condition and obligation contained in any Hedging Agreement entered into between Mortgagor and Mortgagee.

Section 4. Representations and Warranties.

4.1. Mortgagor is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to transact business in the state in which the Premises is located;

4.2. Mortgagor has the requisite power and authority (a) to own its properties and to carry on its business as now being conducted and as contemplated under this Mortgage and each Lease, (b) to place mortgages and liens upon its assets and (c) to execute and deliver or cause to be executed and delivered the Loan Documents and to perform its obligations thereunder;

4.3. The execution and delivery of the Loan Documents and the performance of the terms and conditions thereof by Mortgagor, have been duly authorized by all requisite action, and create the valid and binding obligations of Mortgagor, enforceable in accordance with their respective terms;

4.4. Neither the execution, delivery and performance of this Mortgage by Mortgagor, nor the execution, delivery and performance, by Mortgagor or any other party (except for Mortgagee), of any of the other Loan Documents or any and all other documents, instruments and agreements required by Mortgagee in connection with the Loan, including, without limitation, the execution and delivery of any guaranty by the Guarantor, will violate any provision of (a) law, (b) any order of any court or other Governmental Authority, (c) Mortgagor's organizational documents or operating agreement, (d) any indenture, agreement or other instrument to which Mortgagor or any Guarantor is a party, or by which Mortgagor or any Guarantor is bound, or be in conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever

upon any of the property or assets of Mortgagor or any Guarantor, other than as provided herein and in the Security Instruments;

4.5. All financial data, reports and other information prepared by or for the benefit of Mortgagor or Guarantor and furnished Mortgagee in connection with the Loan are accurate and complete and fairly present the financial position and the results of operations for the periods indicated therein, and there has been no material adverse change in the condition, financial or otherwise, of Mortgagor or the Guarantor since the dates of the most recent financial statements;

4.6. Neither Mortgagor, nor any Guarantor, nor any corporation, partnership or other legal entity in which Mortgagor or any Guarantor is a principal, is in default under any of their respective material obligations and agreements (including the payment of all federal, state and local taxes), to the best of Mortgagor's and Guarantor's knowledge, no condition or state of facts exists which with the giving of notice or passage of time or both would constitute such a default, and there is no action, suit or proceeding at law or in equity or by or before any Governmental Authority now pending, or, to the knowledge of Mortgagor or any Guarantor, threatened against or affecting Mortgagor, any Guarantor, the Mortgaged Property or any properties adjacent to the Mortgaged Property, which, if adversely determined, would have a material adverse effect on the business, operations, properties (including without limitation, the Mortgaged Property), assets or condition, financial or otherwise, of Mortgagor or any Guarantor;

4.7. To Mortgagor's knowledge and except as otherwise previously disclosed to Mortgagee in writing, there is no default under and there exists no condition or state of facts which, with the giving of notice or passage of time or both, would constitute a default under any Lease;

4.8. To the best of Mortgagor's knowledge, the Mortgaged Property and the use thereof for the Permitted Use does not violate (a) any building, zoning, subdivision, land-use, health, sanitation, environmental protection or other law, ordinance, rule or regulation promulgated by any Governmental Authority or (b) any deed, plat or other restriction of any kind applicable to the Mortgaged Property;

4.9. To the best of Mortgagor's knowledge, all utilities and services necessary for the operation of the Mortgaged Property for the Permitted Use and in accordance with each Lease, (a) are available at the boundary of the Premises and are connected to the Improvements, (b) are operational and (c) are of sufficient capacity to adequately service the operation of the Improvements;

4.10. Except as may be set forth in that certain Title Commitment dated the date hereof issued by Commonwealth Land Title Insurance Company under Title Number 07NYW10958 (the "Title Commitment"), there are no party wall agreements or easements across or affecting the Mortgaged Property which have any adverse effect upon the operation of the Mortgaged Property;

4.11. To the best of Mortgagor's knowledge, the Improvements are not located in a designated flood hazard area, as defined in the Flood Disaster Protection Act of 1973 (P.L. 93-234), as amended;

4.12. There is unrestricted access for the passage of motor vehicles to and from the Premises to and from the public road upon which the Premises fronts and all required curb cut or access permits (if any) have been obtained; and

4.13. Neither the making of the Loan nor Mortgagee's acceptance of the Loan Documents will subject Mortgagee to any claim for a brokerage commission, finder's fee or like charge by virtue of any action of Mortgagor.

Section 5. Mortgagor's Covenants. The Mortgagor covenants and agrees with Mortgagee as follows:

5.1. Title.

5.1.1 Mortgagor has good and clear, record and marketable title in fee simple to the Mortgaged Property subject only to the Permitted Encumbrances; this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property; Mortgagor has full power and lawful authority to grant, sell and convey the Mortgaged Property in the manner and form herein done; and Mortgagor will preserve such title, will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons whatsoever, except the holders of the Permitted Encumbrances.

5.1.2 Mortgagor agrees to deliver, within thirty (30) days after the date hereof, an ALTA standard form of Mortgagee's loan policy of title insurance with respect to the Premises, in the amount of the Note, insuring the lien of this Mortgage as a good and valid first lien subject only to the Permitted Encumbrances, and containing such endorsements and affirmative coverage as have been requested by or on behalf of Mortgagee in writing prior to the recording hereof or as Mortgagee otherwise reasonably may require.

5.2. Payment and Performance of Obligations.

5.2.1 Mortgagor shall pay all indebtedness hereby secured at the time or times and in the manner provided herein, in the Note, or in any other instrument secured hereby.

5.2.2 Mortgagor will perform and observe all the terms, provisions, covenants and conditions imposed upon Mortgagor under each and every of the Loan Documents, all at the time or times and in the manner provided therein.

5.3. Insurance.

5.3.1 Mortgagor shall keep the Improvements continuously insured against loss by fire and the risks covered under a so-called "extended coverage endorsement", flood, explosion of boilers, heating apparatus and other pressure vessels, and such other hazards,

casualties and contingencies as Mortgagee from time to time reasonably may require, in an amount equal to one hundred percent (100%) of the replacement cost of the Improvements. The insurance policy evidencing such coverage: (a) shall be endorsed with an Agreed Amount Endorsement, (b) shall be endorsed with a Loss of Rents Endorsement (or equivalent endorsement) for a twelve (12) month period, and (c) shall contain a deductible satisfactory to Mortgagee. The amount of such insurance coverage shall be reviewed not less than annually and increased whenever necessary so as to provide the required coverage.

5.3.2 Mortgagor shall continuously keep in full force and effect a policy of public liability insurance and (if relevant) elevator insurance, against claims for bodily injury, death or property damage occurring upon, in or about the Mortgaged Property or any part thereof in which the limits of liability shall not be less than One Million Dollars (US\$1,000,000) per occurrence and Two Million Dollars (US\$2,000,000) general aggregate, together with an umbrella form liability policy in the amount of Five Million Dollars (US\$5,000,000), which shall be in addition to the limits above set forth. Mortgagor agrees to increase the limits of such liability insurance to such higher amounts as Mortgagee from time to time reasonably may require.

5.3.3 All such insurance shall be evidenced by valid and enforceable policies in form and substance satisfactory to Mortgagee. Without limiting the generality of the foregoing: (a) all such insurance policies shall contain an endorsement requiring thirty (30) days written notice to Mortgagee prior to cancellation or change in the coverage, scope or amount of any such policy or policies, (b) all such insurance policies and certificates thereof shall name Mortgagee, its successors and assigns, as mortgagee, loss payee and additional insured, and (c) any and all policies evidencing casualty insurance shall provide that any and all loss shall be payable to Mortgagee and such loss shall be payable to Mortgagee notwithstanding any act or omission of Mortgagor which might otherwise result in cancellation or forfeiture of said insurance.

5.3.4 Mortgagor shall deliver to Mortgagee evidence satisfactory to Mortgagee of the issuance of renewal or replacement policies not less than thirty (30) days prior to the expiration date of the policy to be renewed or replaced, accompanied, if requested by Mortgagee, by evidence satisfactory to Mortgagee that all premiums payable with respect to such policies have been paid in full by Mortgagor. In addition, Mortgagor shall provide such other insurance as may be reasonably requested by Mortgagee from time to time.

5.3.5 From time to time, upon the request of Mortgagee, Mortgagor shall provide Mortgagee with the originals of all policies evidencing the insurance coverage required under this Mortgage. In any event Mortgagor shall furnish to Mortgagee (a) concurrently with the execution of this Mortgage, a certificate of insurance or other evidence of insurance satisfactory to Mortgagee evidencing that Mortgagor has in full force and effect the insurance coverage required hereunder, and (b) from time to time at the request of Mortgagee, a certificate of insurance or other evidence of insurance satisfactory to Mortgagee evidencing that Mortgagor has in full force and effect the insurance coverage required hereunder.

5.3.6 Mortgagor shall have the right of free choice in the selection of the agent or insurer through or by which the insurance required hereunder is to be placed; provided,

however, said insurer is authorized to write such insurance in the state in which the Premises is located, has a licensed resident agent in said state and has, at all times while this mortgage is in effect, a general policyholder's rating of A-VIII or better in Best's latest rating guide.

5.3.7 Mortgagee shall be, and is hereby, authorized and empowered, for and in the name or names and on behalf of Mortgagor and/or Mortgagee, and for the purposes hereinafter set forth, shall be and is hereby made, constituted and appointed the true and lawful attorney-in-fact of Mortgagor (with full power of substitution and revocation), and in the sole and uncontrolled discretion of said attorney, (a) to demand, adjust, sue for, settle, compromise and collect any amounts due under such insurance policies in the event of loss, and (b) to give releases for any and all amounts received in settlement of loss under such policies; provided, however, so long as no Default Condition exists, Mortgagee shall not exercise such power of attorney unless and until three (3) months have elapsed from the date of such loss without settlement having been made. Unless the settlement of such loss is in excess of the amount of the Obligations, no settlement therefor shall be made without the prior written consent of Mortgagee. The foregoing appointment, being coupled with an interest, is irrevocable until the Obligations are paid and otherwise satisfied in full.

5.3.8 (a) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagor hereby authorizes and empowers Mortgagee, at Mortgagee's option and at Mortgagee's sole discretion, as attorney-in-fact for Mortgagor, to make proof of loss, to adjust and compromise any claim under any insurance policy, to appear in and prosecute any action arising from any policy, to collect and receive insurance proceeds and to deduct therefrom Mortgagee's expenses incurred in the collection process, to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise, and to make any election required or permitted under any insurance policy relating to repair or restoration; provided, however, so long as no Default Condition exists, Mortgagee shall not exercise such power of attorney unless and until three (3) months have elapsed from the date of such loss without settlement having been made. So long as no Default Condition exists, Mortgagee shall disburse any Rents and Continuing Expenses received under any insurance policy to Mortgagor. Mortgagee shall make the Net Proceeds available for the repair and restoration of the Improvements, provided that (i) no Default Condition shall exist, (ii) Mortgagor shall proceed with the repair and restoration of the Improvements as nearly as reasonably possible to the condition the Improvements were in immediately prior to such fire or other casualty promptly after the insurance claims are settled, (iii) no Lease shall be terminated as a result of such fire, (iv) Mortgagee shall be reasonably satisfied that upon the completion of such repair and restoration the gross cash flow and the net cash flow of the Mortgaged Property will be restored to a level at least equal to the level the same were at prior to the date of such fire or other casualty and (v) the estimated cost of repair, restoration, rebuilding or replacement (hereinafter, collectively, the "Cost to Repair") does not exceed \$500,000.00. If the Cost to Repair is greater than \$500,000.00 but does not exceed \$1,000,000.00, provided the conditions set forth in (i), (ii), (iii) and (iv) above have been satisfied, Mortgagee shall release so much of the Net Proceeds as may be required to pay for the actual Cost to Repair directly to the Mortgagor in accordance with the provisions of this Section 5.3.9. If the Cost to Repair is greater than or equal to \$1,000,000.00 or if the casualty occurs within one hundred and eighty

(180) days of the Maturity Date (as such term is defined in the Note) the Mortgagee, in its sole and absolute discretion, may either apply the proceeds of insurance to reduce the Mortgagor's Obligations or, provided the conditions set forth in (i), (ii), (iii) and (iv) above have been satisfied, release so much of the Net Proceeds as may be required to pay for the actual Cost of the repair work to repair, restore, rebuild or replace the Improvements (collectively, the "Repair Work") directly to the Mortgagor in accordance with the provisions of this Section 5.3.9.

(b) Upon satisfaction of the provisions of the preceding paragraph (a), the Net Proceeds will be disbursed by Mortgagee to Mortgagor to pay for the costs of the Repair Work. The Net Proceeds shall be held by Mortgagee in escrow until expended in connection with the Repair Work, it being agreed that any Net Proceeds so held by Mortgagee may be commingled with the general funds of Mortgagee, shall bear interest at such rate as reasonably determined by Mortgagee, and shall constitute additional security for the payment of the Obligations. The Net Proceeds shall be paid by Mortgagee to, or as directed by, Mortgagor from time to time during the course of the Repair Work upon satisfaction of the following conditions: (i) all plans, specifications, costs estimates, contracts and bonds, if any, for the Repair Work, have been obtained and are satisfactory to Mortgagee in its commercially reasonable discretion and (ii) Mortgagee has received satisfactory evidence that: (x) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested payment) in connection with the repair and restoration have been paid for in full, (y) there exists no notices of intention, mechanics or other liens and encumbrances on the Mortgaged Property arising out of the Repair Work, and (z) the balance of the Net Proceeds plus the balance of any deficiency deposits made by Mortgagor pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the Repair Work. The Repair Work shall be done and completed by Mortgagor in an expeditious and diligent fashion and in compliance with all applicable laws, rules and regulations, and all plans and specifications required in connection with the repair and restoration shall be subject to the prior review and approval in all respects by an independent inspecting engineer selected by Mortgagor and reasonably acceptable to Mortgagee (the "Inspecting Engineer"). All costs and expenses incurred by Mortgagee in connection with making the Net Proceeds available for the Repair Work, including, without limitation, counsel fees and disbursements and the Inspecting Engineer's fees incurred by Mortgagee, shall be paid by Mortgagor. In no event shall Mortgagee be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the value of the work in place as part of the repair and restoration, as certified by the Inspecting Engineer, minus 10% of such costs (such 10% being hereinafter referred to as the "Retainage"). Once fifty percent (50%) of the Repair Work has been completed, the Retainage shall be reduced to 5%. Mortgagee shall not be obligated to make disbursements of the Net Proceeds more than once every thirty (30) days. If the Cost to Repair does not exceed \$500,000.00, only one disbursement of the Net Proceeds shall be made by Mortgagee, which disbursement shall be made upon certification by the Inspecting Engineer that the Repair Work has been completed in accordance with the provisions of this paragraph, and upon receipt by Mortgagee of evidence satisfactory to Mortgagee that the costs of the repair and restoration have been paid in full or will be paid in full out of such disbursement. The Retainage shall not be released until the Inspecting Engineer certifies that the repair and restoration have been completed in accordance with the provisions of this paragraph, and Mortgagee receives evidence satisfactory to Mortgagee that the costs of the repair and restoration have been paid in full or will be paid in full out of the

Retainage. The excess, if any, of the Net Proceeds after the completion of the Repair Work and the payment in full of all costs incurred in connection therewith shall be applied by Mortgagee in reduction of the Obligations in such priority and proportions as Mortgagee in its commercially reasonable discretion shall deem proper. If at any time the Net Proceeds, or the undisbursed balance thereof, shall not, in the commercially reasonable opinion of Mortgagee, be sufficient to pay in full the balance of the costs which will be incurred in connection with the completion of the Repair Work, Mortgagor shall deposit the deficiency with Mortgagee before any further disbursement of the Net Proceeds shall be made, which deficiency deposit may be commingled with the general funds of Mortgagee, shall bear interest at such rate as reasonably determined by Mortgagee and shall be disbursed for costs actually incurred in connection with the Repair Work on the same conditions applicable to the Net Proceeds. Any such deficiency deposit, until disbursed pursuant to this paragraph, shall constitute additional security for the payment of the Obligations. The balance, if any, of any such deficiency deposit remaining after the Inspecting Engineer certifies that the Repair Work has been completed in accordance with the provisions of this paragraph and the receipt by Mortgagee of evidence satisfactory to Mortgagee that all costs incurred in connection with the Repair Work have been paid in full shall be returned by Mortgagee to Mortgagor. All costs of the Repair Work in excess of the Net Proceeds shall be paid for by Mortgagor. If Mortgagee shall receive and retain such Net Proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Obligations. Mortgagee shall not be obligated to see to the proper application of insurance money paid over to Mortgagor, and if Mortgagee receives and retains any Net Proceeds, the lien of this Mortgage shall be affected only by a reduction of the amount of said lien by the amount of such insurance money so received and retained by Mortgagee. Nevertheless, if prior to the receipt by Mortgagee of any insurance proceeds, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, as between Mortgagor and Mortgagee, Mortgagee shall have the right to receive said insurance proceeds, and Mortgagor shall pay over to Mortgagee said insurance proceeds as, if and when Mortgagor receives same, to the extent of (i) any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered, and (ii) of the attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the collection of such insurance proceeds. Mortgagor will not permit any condition to exist on the Mortgaged Property that would wholly or partially invalidate the insurance policies.

5.3.9 If Mortgagee shall by any manner acquire title to the Mortgaged Property, it shall thereupon become the sole and absolute owner of all insurance policies held by or required hereunder to be delivered to Mortgagee, with the sole right to collect and retain all unearned premiums and dividends thereon, and Mortgagor shall only be entitled to a credit, in reduction of the then outstanding indebtedness secured hereby, in the amount of the short rate cancellation refund. Without limiting the generality of the foregoing, in the event of foreclosure of this Mortgage or any transfer of title to the Mortgaged Property to a third-party purchaser pursuant to the power(s) in this Mortgage granted Mortgagee, Mortgagee shall be and is hereby authorized and empowered, for and in the name or names and on behalf of Mortgagor and/or Mortgagee, and for the purposes hereinafter set forth, shall be and is hereby made, constituted and appointed the true and lawful attorney-in-fact of Mortgagor (with full power of substitution and revocation) in the name place and stead of Mortgagor, and in the sole and uncontrolled

discretion of said attorney, to surrender up the policies of insurance covering the Mortgaged Property and any part thereof and to collect any amounts due thereunder or, at its option, to transfer all right, title and interest in and to said policies and the proceeds thereof to any purchaser of the Mortgaged Property or any part thereof without obligation to account therefor to any person claiming title to the Mortgaged Property; provided, however, that any amounts received by Mortgagee under said policies by way of refunds, dividends or otherwise, as aforesaid, shall be applied to the payment of the Obligations, and any surplus shall be paid over as a surplus on foreclosure. The foregoing appointment being coupled with an interest is irrevocable. Upon the occurrence of an Event of Default, Mortgagee shall have no obligation to disburse any funds to Mortgagor and all monies held by Mortgagee may be applied toward satisfaction of the Obligations. Notwithstanding the foregoing, this Section 5.39 shall not apply with respect to any blanket insurance policies of Mortgagor which do not relate solely to the Mortgaged Property. The provisions of Subsection 4 of Section 254 of the Real Property Law of New York covering the insurance of buildings against loss by fire shall not apply to the terms of this Mortgage.

5.3.10 Mortgagee consents to Mortgagor providing the insurance coverage required under this Section 5.3 by causing one or more tenants leasing the entire or a portion of the Mortgaged Property to provide such insurance in the same form and amounts as set forth in this Section 5.3.

5.4. Payment of Taxes and Liens.

5.4.1 Mortgagor shall pay, when due, all Impositions and shall furnish to Mortgagee, promptly after payment of the same, certificates, receipts or other evidence reasonably satisfactory to Mortgagee of such payment; provided, however, Mortgagor shall not be required to pay and discharge any such Imposition, if and so long as (a) the validity thereof shall be contested by Mortgagor with diligence and in good faith by appropriate proceedings and (b) Mortgagor shall have deposited with Mortgagee a sum equal to the amount being so contested and any additional charge, penalty or expense which may be incurred as a result of such contest; and provided further, however, that any such Imposition and any such additional charge, penalty or expense shall be paid in full before the Mortgaged Property, or any part thereof, shall be seized and sold in satisfaction thereof.

5.4.2 Mortgagor shall pay, when the same shall become due and payable, all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in or permit the creation of a lien on the Mortgaged Property or any part thereof, provided, however, Mortgagor shall not be required to pay any such claim or demand, if and so long as (a) the validity thereof shall be contested by Mortgagor with diligence and in good faith by appropriate proceedings and (b) in the event that such claim or demand results in a lien or notice of record against the Mortgaged Property or any part thereof, Mortgagor shall have bonded or otherwise caused such lien to be removed or discharged.

5.4.3 Mortgagor shall pay to Mortgagee, within thirty (30) days after Mortgagee's demand, an amount equal to any and all taxes, assessments or charges of whatever nature which may at any time be assessed against Mortgagee with respect to the Note or this Mortgage or its ownership or holding thereof, whether under statutes now or hereafter in effect.

In the event any such tax, assessment or charge is not or, under applicable law, cannot be so paid by Mortgagor, at the option of Mortgagee, the Obligations shall become immediately due and payable.

5.5. Insurance and Tax Deposits.

Mortgagee, at any time if an Event of Default has occurred and is continuing or if Mortgagor has failed to pay the Impositions for the immediately preceding due date, upon ten (10) days notice to Mortgagor, may require Mortgagor to pay to Mortgagee, on the first day of each calendar month, a sum equal to (a) one-twelfth (1/12) of the Impositions and (b) one-twelfth (1/12) of the annual premiums for the insurance required hereunder to be maintained on the Mortgaged Property, the respective amounts of such Impositions and premiums to be reasonably estimated from time to time by Mortgagee. Mortgagee shall apply the Deposited Funds to the payment of such Impositions and premiums and shall render an annual accounting to Mortgagor of all disbursements of the Deposited Funds. Although each such monthly payment of Deposited Funds are to be in a lump sum, each component thereof shall be deemed to be held separately by Mortgagor for, and shall be applied only to, the particular item for which payment was made by Mortgagor, unless Mortgagee, in its discretion, elects otherwise. If at any time Mortgagee estimates that there shall or will not be on deposit with it, at least one (1) month prior to the due date (a) of any item constituting part of the Impositions and/or (b) of any annual insurance premium, a sum sufficient for the payment of such item and/or premium in full, Mortgagor, upon demand, shall pay the amount of such deficiency to Mortgagee notwithstanding that there may already be deposited with Mortgagee sums for the payment of other items which are not yet due. If the amount of the Deposited Funds shall exceed the amount necessary to pay such Impositions and premiums for the then current year, such excess shall be credited against future monthly deposits required hereunder. Unless otherwise required by applicable law, no interest shall be paid on the Deposited Funds, and the Deposited Funds may be commingled with Mortgagee's general funds. Upon payment and other satisfaction in full of the Obligations, any excess Deposited Funds shall be refunded to Mortgagor. Upon the occurrence of any Event of Default, Mortgagee may apply against the Obligations, in such manner as Mortgagee may determine, any or all of the Deposited Funds then held by Mortgagee.

5.6. Maintenance and Inspections.

5.6.1 Mortgagor shall at all times keep and maintain the Mortgaged Property and each part thereof in sound condition and in a first-class state of decoration and repair.

5.6.2 Mortgagor shall not: permit any strip or waste of the Mortgaged Property; permit the violation of any law, ordinance or rule or regulation of any Governmental Authority affecting the same or the use thereof, permit any conditions to exist which would wholly or partially invalidate any insurance on the Mortgaged Property; or do or permit anything to be done to the Mortgaged Property or any part thereof that might materially diminish the value thereof.

5.6.3 Mortgagor shall permit Mortgagee, its officers, agents and representatives to enter upon the Mortgaged Property at all reasonable times to view and inspect the same.

5.6.4 Mortgagor, within thirty (30) days after demand by Mortgagee (or immediately upon demand in cases which Mortgagee deems to be an emergency), shall make such repairs, replacements, renewals, or additions, or perform such items of maintenance to the Mortgaged Property or any part thereof as Mortgagee reasonably may require in order to maintain the Mortgaged Property at the standards required by this Section.

5.7. Alterations and Additions.

Mortgagor shall not remove or demolish any Improvements, or make any material alteration or addition to the Improvements (each an "Alteration"), including, without limitation, changes to the character, design, structure or size of the Improvements, without the prior written consent of the Mortgagee. Notwithstanding the foregoing, Mortgagor shall have the right to make any Alteration with respect to the Improvements without Mortgagee's prior written consent provided the cost of such Alteration is equal to or less than Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00).

5.8. Management and Operation.

5.8.1 Mortgagor shall at all times provide management for the Mortgaged Property reasonably satisfactory to Mortgagee. Mortgagor represents and warrants that, as of the date hereof, no third party management company has been engaged to manage the Mortgaged Property. In the event that (i) Mortgagor decides to engage a third-party management company to manage the Mortgaged Property, or (ii) Mortgagee requires Mortgagor to engage a third-party management company pursuant to Section 5.8.2, Mortgagor agrees to engage a management company satisfactory to Mortgagee, pursuant to a management agreement satisfactory to Mortgagee, and to execute, and to cause such management company to execute, an agreement assigning the management agreement to Mortgagee, subordinating such management agreement and the terms thereof, including but not limited to such management company's right to payment of management fees, and containing certain other agreements of Mortgagor and such management company, in Mortgagee's then-current form of such agreement (the "Assignment of Management Agreement"), and to deliver to Mortgagee promptly upon such engagement, a fully-executed copy of the management agreement, together with the Assignment of Management Agreement signed by Mortgagor and such manager.

5.8.2 If Mortgagee reasonably determines at any time that the Mortgaged Property is not being managed in accordance with generally accepted management practices for similarly situated projects, Mortgagee may deliver written notice thereof to Mortgagor, which notice shall specify in reasonable detail the grounds for Mortgagee's determination. If Mortgagee reasonably determines that the conditions specified in Mortgagee's notice are not remedied to Mortgagee's reasonable satisfaction by Mortgagor within 30 days after the date of such notice, Mortgagee may direct Mortgagor to engage a management company acceptable to Mortgagee in Mortgagee's sole discretion. In addition, if an Event of Default has occurred, Mortgagee may direct Mortgagor to engage a management company acceptable to Mortgagee in Mortgagee's sole discretion.

5.8.3 Mortgagor will continuously operate the Mortgaged Property for the Permitted Use.

5.9. Compliance with Laws and Restrictions.

5.9.1 Mortgagor promptly shall comply with all present and future laws, ordinances, rules, regulations, directives and other requirements of all Governmental Authorities; provided, however, Mortgagor may postpone such compliance provided such non-compliance shall not (a) subject Mortgagee to liability, criminal prosecution or any other penalty, (b) impair the value, or jeopardize the safety or condition, of the Mortgaged Property, or (c) constitute a default under any Lease, if and so long as the validity or legality of any such governmental requirement shall be contested by Mortgagor with diligence and in good faith by appropriate proceedings.

5.9.2 Mortgagor shall comply with all restrictive covenants and other private restrictions, if any, applicable to the Mortgaged Property.

5.10. Hazardous Waste.

5.10.1 Mortgagor hereby warrants and represents to Mortgagee that, except as set forth in the Environmental Site Assessment Report, (a) Mortgagor has never released, generated, stored or disposed of any Hazardous Waste on the Mortgaged Property, (b) Mortgagor is not aware of the existence, release or threat of release of any Hazardous Waste on or from the Mortgaged Property or on or from any property adjacent to the Mortgaged Property, and (c) Mortgagor has not received any notice, order, claim or demand from the United States Environmental Protection Agency ("EPA") or any state or local governmental agency, authority or body having jurisdiction over Hazardous Waste or the storage or removal thereof (collectively, a "State Agency") with respect to the existence, release or threat of release of any Hazardous Waste.

5.10.2 Mortgagor shall not release, generate, store or dispose of any Hazardous Waste on the Mortgaged Property or on any property adjacent to the Mortgaged Property.

5.10.3 Mortgagor shall immediately notify Mortgagee in writing of (a) any and all enforcement, clean-up, removal or other action instituted or threatened by the EPA or any State Agency pursuant to any Hazardous Waste Laws, and (b) any and all claims made or threatened by any third party against Mortgagor or the Mortgaged Property or any part thereof, relating to the existence of, or damage, loss or injury from, any Hazardous Waste; and Mortgagee, to the extent permitted by applicable law, shall have the right to join and participate in, as a party if it so elects, any proceedings or actions initiated in connection with any such claim and to have all of its costs and expenses, including, without limitation, reasonable attorney's fees, in connection therewith paid by Mortgagor.

5.10.4 In the event that any Hazardous Waste is found on or in the Mortgaged Property, Mortgagor shall immediately contain and remove the same in compliance with all Hazardous Waste Laws.

5.10.5 Mortgagor agrees to indemnify and hold Mortgagee harmless from and against any and all claims, liabilities, costs and expenses incurred by Mortgagee, including, without limitation, costs of litigation and reasonable attorney's fees, arising from the release, existence or removal of, any Hazardous Waste on or in the Mortgaged Property or on any properties adjacent to the Mortgaged Property. THIS RIGHT OF INDEMNIFICATION SHALL SURVIVE THE PAYMENT IN FULL OF THE NOTE, NOTWITHSTANDING ANY DISCHARGE OF THIS MORTGAGE.

5.10.6 Mortgagee, at its election and in its sole discretion, at any time and from time to time, whether or not a Default Condition shall exist hereunder, upon receipt of evidence of the existence of Hazardous Materials at the Mortgaged Property that were not disclosed in the Environmental Site Assessment Report or upon substantial belief that a discharge of Hazardous Materials may have occurred on or about the Mortgaged Property, may cause one or more environmental site assessments of the Mortgaged Property to be undertaken. Environmental site assessments may include, without limitation, a detailed visual inspection of the Mortgaged Property and any part thereof, as well as the taking of soil samples, water samples and such other investigation or analysis as is necessary or appropriate for a complete assessment of whether any Hazardous Waste exists on or in the Mortgaged Property or any part thereof and the compliance of the Mortgaged Property with all Hazardous Waste Laws provided that no soil samples or destructive tests shall be made except on at least five (5) days notice to Mortgagor. If Mortgagee causes any such environmental site assessment to be undertaken because Mortgagee has reason to suspect Hazardous Waste may be present on the Mortgaged Property or any part thereof, or, if Mortgagee causes the same to be undertaken without such reason but such environmental site assessment discloses Hazardous Waste is so present, or, if Mortgagee causes such environmental site assessment to be undertaken in contemplation of foreclosure of this Mortgage, Mortgagor shall pay the cost thereof to Mortgagee on demand of Mortgagee, and until paid the cost thereof shall be added to the unpaid principal of the Obligations, shall bear interest at the Default Rate, and the payment thereof, together with such interest, shall be secured by the lien of this Mortgage and the other Security Instruments.

5.10.7 Mortgagee, at its election and in its sole discretion, may (but shall not be obligated to) cure any failure on the part of Mortgagor or any Lessee or other user of the Mortgaged Property or any part thereof (any such Lessee or other user being, in this Section 5, hereinafter referred to as a "User") to comply with the Hazardous Waste Laws; such cure may include, without limitation, the following actions:

- (a) arranging for the cleanup or containment of Hazardous Waste found in, on or near the Mortgaged Property and paying for such cleanup and containment costs and other costs associated therewith;
- (b) paying on behalf of Mortgagor or any User, any fines or penalties imposed on Mortgagor or any User by the EPA or any State Agency in connection with Hazardous Waste; and
- (c) making any other payment or performing any other act which may

prevent a release of Hazardous Waste, facilitate the cleanup thereof, or prevent a lien from attaching to the Mortgaged Property.

Any partial exercise by Mortgagee of the remedies hereinabove set forth or any partial undertaking on the part of Mortgagee to cure the failure of Mortgagor or any User to comply with the Hazardous Waste Laws, shall not obligate Mortgagee to complete any action taken or require Mortgagee to expend further sums to cure Mortgagor's or any User's noncompliance; and the exercise of any such remedies shall not place upon the Mortgagee any responsibility for the operation, control, care, management or repair of the Mortgaged Property, or make the Mortgagee the "owner" or "operator" of the Mortgaged Property or a "responsible party" within the meaning of any of the Hazardous Waste Laws. Any amounts paid or costs incurred by the Mortgagee in the exercise of any of its rights under this subsection 5.10.7 shall be paid by Mortgagor on demand of Mortgagee, and until paid shall be added to the unpaid principal of the Obligations, shall bear interest at the Default Rate, and the payment thereof, together with such interest, shall be secured by the lien of this Mortgage and by the other Security Instruments. Mortgagee, by making any such payment or incurring any such costs, shall be subrogated to any rights of Mortgagor or any User to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to Mortgagor's title to the Mortgaged Property or any part thereof.

5.10.8 Mortgagor shall: (i) promptly cause, but no later than ten (10) days from the date hereof, the proposed scope of work for additional investigations specified in the Supplemental Investigation Work Plan, revised as of September 20, 2007, and prepared by J.R. Holzmacher, P.E., LLC for The Robert Martin Company, to be implemented at the Mortgaged Property; and (ii) promptly commence, but no later than ten (10) days from the date hereof, the development and implementation of an asbestos Operations and Maintenance Program (the "O&M Program"), as recommended in the Environmental Site Assessment Report. In addition, Mortgagor shall, during the term of the Loan, including any extension or renewal thereof, comply with the terms and conditions of the O&M Program.

5.11. Condemnation.

5.11.1 Upon the receipt by Mortgagor of notice of the institution of any proceeding or negotiations for the taking of the Mortgaged Property, or any part thereof, in condemnation or by the exercise of the power of eminent domain, Mortgagor shall give notice thereof to Mortgagee. Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel. Mortgagor, notwithstanding that Mortgagee may not be a party to any such proceeding, will promptly give to Mortgagee copies of all notices, pleadings, judgments, determinations and other papers received by Mortgagor therein. Mortgagor will not enter into any agreement for the taking of the Mortgaged Property, or any part thereof, with anyone authorized to acquire the same in condemnation or by eminent domain unless Mortgagee shall first have consented thereto in writing, which consent shall not be unreasonably withheld or delayed.

5.11.2 Any award, whether paid as a result of a negotiated settlement or judgment, shall be paid to Mortgagee, and Mortgagee shall have the right and is hereby

constituted and appointed the true and lawful attorney of Mortgagor, in the name and stead of Mortgagor, and in the discretion of said attorney, to collect and receive the total amount of such award, including interest, and to give proper receipts and acquittances therefor. The foregoing appointment, being coupled with an interest, is irrevocable until the Obligations are paid and otherwise satisfied in full.

5.11.3 In the event of any taking of the Premises and/or Improvements or any part thereof in condemnation or by exercise of the power of eminent domain, at the option of Mortgagee, the Obligations shall become immediately due and payable, and, at the option of Mortgagee, all awards paid or payable to Mortgagor on account of such taking shall be applied to the payment and discharge of the Obligations, whether or not then due, such application to be in the following order of priority: (a) payment of all amounts expended, advanced or incurred by Mortgagee in the discharge of Mortgagor's obligations hereunder; (b) payment of all expenses referenced in subsection 5.19 hereof, (c) payment of accrued interest under the Note; (d) payment of unpaid principal under the Note; and (e) payment and satisfaction of any and all other Obligations. To the extent that such award or awards exceed the amount required to pay in full the principal and interest under the Note and all other sums and charges then secured hereby, Mortgagee shall pay over to the person or persons legally entitled thereto the amount of such excess; provided, however, that until the actual vesting of title in the condemning authority in such proceeding or pursuant to any agreement in lieu or in settlement thereof, the obligations of Mortgagor to pay, perform and observe the terms, covenants and conditions of the Note and this Mortgage shall continue unimpaired. In no event shall Mortgagee be required to satisfy or discharge this Mortgage until the Obligations are paid and otherwise satisfied in full.

5.11.4 In the event of any taking of a portion of the, as opposed to the entire, Premises and/or Improvements in condemnation or by exercise of the power of eminent domain, notwithstanding anything to the contrary set forth herein, if the Premises is condemned and Mortgagee determines that all of the conditions specified in this section have been satisfied, then Mortgagee shall apply the condemnation proceeds (a) first to reimbursing itself for all reasonable costs incurred by it in the collection of such proceeds and (b) second to reimbursing Mortgagor for such actual costs as shall have been incurred by Mortgagor in restoring the Premises and shall be approved by Mortgagee, which approval shall not be unreasonably withheld or delayed. Condemnation proceeds shall be applied to such restoration solely if (A) Mortgagee reasonably determines that: (i) the Premises is capable of being suitably restored in accordance with applicable governmental requirements to the value, condition, character and general utility existing prior to such damage or destruction; (ii) sufficient funds are unconditionally available (from condemnation proceeds or from funds to Mortgagor) to enable Mortgagor promptly to commence, and thereafter diligently to prosecute to completion, such restoration; (iii) no Default Condition exists; and (iv) neither the validity, enforceability nor priority of the lien of this Mortgage shall be adversely affected; (B) Mortgagor has entered into a written agreement, satisfactory in form and substance to Mortgagee, containing such conditions to disbursements as are employed at the time by Mortgagee for construction loans; (C) Mortgagor has delivered to Mortgagee such security as Mortgagee might have reasonably required to assure completion of restoration in accordance with the standards specified above; and (D) Mortgagor has complied with such further reasonable requirements as Mortgagee might have specified. To the extent that

the foregoing conditions are not satisfied, Mortgagee may apply such proceeds to the payment of the Obligations.

5.11.5 Mortgagor shall pay interest on the Note and other indebtedness forming part of the Obligations at the rate or rates provided for therein, notwithstanding any lesser rate required to be paid by the authorities making such award or awards.

5.12. Records and Financial Statements; Financial Covenants.

5.12.1 Mortgagor will keep proper and separate books of account, in accordance with generally accepted accounting principles, and make full and true entries of all dealings and transactions of every kind relating to the Mortgaged Property.

5.12.2 Within one hundred twenty (120) days after the end of each fiscal year of Mortgagor, Mortgagor shall furnish to Mortgagee: (a) a copy of the annual financial statements for such fiscal year accurately reflecting the financial condition of Mortgagor and the results of its operations, including, without limitation, balance sheets and profit and loss statements, all prepared in accordance with generally accepted principles of accounting consistently applied; the financial statements of Mortgagor shall be internally prepared by management of Mortgagor and shall set forth separately the property included in, the liabilities relating to and the results of the operations of, the Mortgaged Property; and (b) a “rent roll,” dated as of the end of such fiscal year and stating with respect to each unit in the Mortgaged Property the name of the tenant thereof, the rent paid by such tenant, the date to which such rent is paid, the date on which such tenant’s leasehold interest terminates and the amount held by Mortgagor by way of security deposit from each such tenant (a “Rent Roll”); all such financial statements and such Rent Rolls to be certified to as being accurate by the chief financial officer of Mortgagor.

5.12.3 Within thirty (30) days after the end of each quarter in each fiscal year of Mortgagor, Mortgagor shall furnish to Mortgagee: (a) a financial report accurately reflecting the results of the operations of the Mortgaged Property, including without limitation, a balance sheet and a profit and loss statement for such quarter and on a year-to-date basis, (b) a Rent Roll dated as of the end of such fiscal quarter; and (c) a gross sales report accurately reflecting the gross sales of any Lessee obligated to report such sales to Mortgagor pursuant to the terms of the respective Lease, including, but not limited to, Walgreen Eastern Co., Inc., its successors and assigns (collectively, “Walgreen”); all such financial reports, such Rent Rolls and such gross sales report to be certified to as being accurate by the chief financial officer of Mortgagor.

5.12.4 Mortgagor shall cause each Guarantor, (i) within one hundred twenty (120) days after the end of each fiscal year of Guarantor, to furnish to Mortgagee a signed audited financial statement accurately reflecting the financial condition of Mortgagor and the results of its operations, including, without limitation, audited balance sheets and audited profit and loss statements, in form reasonably satisfactory to Mortgagee, prepared by a certified public accountant reasonably satisfactory to Mortgagee and in accordance with generally accepted principles of accounting consistently applied; and (ii) within sixty (60) days after filing, a copy of each Guarantor’s current signed Federal income tax returns (with all schedules and exhibits).

5.12.5 Upon Mortgagee's request, Mortgagor shall furnish such other information bearing on the financial condition of Mortgagor and the Guarantor, and the status and progress of the operation of the Mortgaged Property, as Mortgagee may from time to time reasonably request.

5.12.6 All books and records of Mortgagor with respect to the Mortgaged Property shall be kept at the Mortgaged Property or at Mortgagor's principal place of business and shall be open to inspection by Mortgagee at all reasonable times. Upon the occurrence of any Default Condition, on demand of Mortgagee, Mortgagor forthwith shall deliver to Mortgagee all such books and records.

5.12.7 At all times during the term of the Loan, Mortgagor shall maintain the financial covenants set forth in the Note.

5.13. Alienation.

5.13.1 Mortgagor shall not, directly or indirectly, sell, convey, mortgage, pledge, hypothecate, encumber, lease, assign or otherwise transfer the Mortgaged Property or any part thereof or any interest therein without the prior written consent of Mortgagee.

5.13.2 Without limiting the generality of the foregoing, Mortgagor will not create, join or consent to any private restrictive covenant or other restriction affecting the Mortgaged Property or any part thereof, without the prior written consent of Mortgagee.

5.13.3 Acadia Realty Trust, or an affiliate or subsidiary of Acadia Realty Trust in which it directly owns and controls, in the aggregate, at least fifty-one percent (51%) of such affiliate or subsidiary (collectively, "ART") may assume the Loan provided that: (i) no Event of Default has occurred or is continuing; (ii) ART executes an assumption agreement in form and substance satisfactory to the Mortgagee, (iii) ART provides a replacement guarantor or guarantors for the Loan, which replacement guarantor(s) shall be satisfactory to Mortgagee in its sole discretion; and (iv) ART pays all costs and expenses reasonably incurred in connection with such assumption of the Loan, including, but not limited to, Mortgagee's reasonable attorneys' fees and disbursements, title charges and recording fees, if any. Additionally, the replacement guarantor(s) shall execute documents (the "Replacement Guaranty Documents") similar in form and substance to the Guaranty Documents, which documents shall contain financial covenants acceptable to Mortgagee and the replacement guarantor(s), and any other documents as reasonably required by Mortgagee. The foregoing right shall only be exercised one time during the term of the Loan. If it is exercised in accordance with the foregoing, the assumption right shall thereafter be a nullity.

5.13.4 Notwithstanding Section 5.13.1, Mortgagee's consent shall not be required for any public offering or transfer of shares of Acadia Realty Trust on a national recognized stock exchange.

5.14. Senior or Junior Indebtedness.

Mortgagor shall pay any and all indebtedness secured by any mortgage creating a senior and prior lien, if any, or junior and subordinate lien, if any, on the whole or any part of the Mortgaged Property and perform all covenants, terms and conditions contained in any such mortgage on the part of Mortgagor to be performed and observed, all within the periods provided for payment, performance and observance in any such mortgage; provided, however, the foregoing shall not be deemed to be a consent by Mortgagee to the creation of any such senior or junior indebtedness.

5.15. Preservation of Easements, Licenses and Zoning

5.15.1 Mortgagor, to the extent reasonably within its control, shall maintain, preserve and renew (a) any and all easements, rights of way, privileges and hereditaments now or hereafter belonging or inuring to the benefit of the Premises and/or Improvements or any part thereof, and (b) any and all Licenses.

5.15.2 Without the prior consent of the Mortgagee, Mortgagor will not initiate, create, join in or consent to any change of zoning with respect to the Mortgaged Property or any part thereof.

5.16. Mortgagee's Right to Pay or Perform Mortgagor's Covenants.

If Mortgagor fails, as required under this Mortgage, (a) to maintain insurance or pay the premiums therefor, (b) to pay and furnish receipts for all Impositions, (c) to pay for all labor and materials or to otherwise pay any claim which might result in or permit the creation of a lien on the Mortgaged Property or any part thereof, (d) to maintain or repair the Improvements, (e) to provide management or security for the Mortgaged Property, or (f) to pay any indebtedness secured by a lien or encumbrance on the Mortgaged Property or any part thereof (other than the Note), or if Mortgagor fails to otherwise pay, perform or observe any of Mortgagor's other covenants contained in this Mortgage, Mortgagee, at its option upon ten (10) days written notice to Mortgagor, may procure such insurance, pay such Impositions and any penalty and interest thereon, redeem the Mortgaged Property or any part thereof from any tax sale, procure such receipts, pay for such labor and materials, pay any such claim, do such maintenance or make such repairs, retain and pay for such management and/or security, pay any and all such liens and encumbrances and/or otherwise disburse such sums and/or take such action as Mortgagee deems necessary or appropriate (a) to cause compliance with Mortgagor's covenants under this Mortgage and/or (b) to protect Mortgagee's interest and/or the Mortgaged Property or any part thereof, and all amounts advanced by Mortgagee for the payment thereof and all expenses so incurred by Mortgagee, unless otherwise agreed in writing, shall be paid by Mortgagor to Mortgagee on demand of Mortgagee, and until paid such amounts shall be added to the unpaid principal of the Obligations, shall bear interest at the Default Rate, and the payment thereof, together with such interest, shall be secured by the lien of this Mortgage and the other Security Instruments. The failure of Mortgagee to take any such action shall not render Mortgagee liable to Mortgagor or any third party.

5.17. Proceedings and Indemnification.

5.17.1 If Mortgagor becomes a party defendant to any action or other proceeding brought by a third party concerning or otherwise affecting (a) this Mortgage or any of the other Loan Documents, (b) the Loan or (c) the Mortgaged Property or any part thereof or any interest therein or the construction, operation or occupancy thereof, or (d) title to the Mortgaged Property and/or the priority, perfection, enforceability or validity of any lien or security interest granted to secure the Obligations, including any action to foreclose any lien or security interest affecting Mortgagor or all or any part of the Mortgaged Property, Mortgagor shall:

- (i) promptly inform Mortgagee of the commencement thereof and thereafter timely apprise Mortgagee of all material developments therein;
- (ii) not take any position therein which would materially and adversely affect the interest of the Mortgagee;
- (iii) cooperate fully with Mortgagee with respect thereto; and
- (iv) consent to Mortgagee's becoming a party thereto, at the election of Mortgagee and to the extent permitted by law.

5.17.2 If Mortgagee becomes a party defendant to, or is compelled to testify or produce documents in, any action or other proceeding described in subsection 5.17.1 above, whether before or after payment in full of the Obligations, Mortgagor shall indemnify, defend and hold Mortgagee, its officers, directors and employees harmless from any and all liability by reason of each and every such action, including, without limitation, reasonable attorneys' fees and expenses incurred by Mortgagee in any such action, whether or not any such action is prosecuted to judgment. This right of indemnification shall survive the payment in full of the Note, notwithstanding any discharge of this Mortgage.

5.17.3 Mortgagor agrees to indemnify Mortgagee with respect to any and all loss, cost or damage (including, without limitation, reasonable attorneys' fees) incurred or suffered by Mortgagee as a result of (1) any fraud or material misrepresentation made by or on behalf of Mortgagor; (2) any and all condemnation awards or insurance proceeds which are not applied in accordance with the provisions of the Security Instruments; (3) any and all rents, revenues, incomes, issues, proceeds or profits of the Mortgaged Property ("Rents and Profits") collected by or on behalf of the Mortgagor following an Event of Default which are not applied, (i) first, to the payment of customary and usual operating expenses of the Mortgaged Property as the same become due and payable, and (ii) then, to the payment of principal, interest and other sums due under the Note and other Loan Documents; (4) the Mortgagor's failure following an Event of Default to deliver to the Mortgagee, on demand, all Rents and Profits, security deposits and books and records relating to the Mortgaged Property; (5) the Mortgagor's failure to procure and maintain any insurance policy required by the Security Instruments; (6) any damage or material waste of the Mortgaged Property, or any portion thereof, caused by the willful, wanton or tortious act or omission of the Mortgagor, any of its representatives or agents or any Guarantor; (7) any violation of or failure to comply with the provisions of Section 5.10 of this Mortgage;

and (8) the failure of the Mortgagor to pay any Impositions or insurance premiums with respect to the Mortgaged Property or any charges for labor or materials which may result in the creation of liens on the Mortgaged Property.

5.18. Further Assurances.

5.18.1 Mortgagor shall not do or suffer any act or thing to be done which would impair all or any part of the security for the payment of the Obligations or this Mortgage or the other Security Instruments.

5.18.2 Mortgagor and Mortgagee, within ten (10) days after request by the other, shall furnish to the requesting party a written statement, duly acknowledged, of the amount of the unpaid balance of the Note and containing such other information Mortgagee or Mortgagor, as the case may be, may reasonably request.

5.18.3 At any time and from time to time until payment in full of the Obligations, upon request of Mortgagee, Mortgagor will promptly execute, acknowledge and deliver to Mortgagee such additional instruments, and shall take such further actions, all at the expense of Mortgagor, as Mortgagee may reasonably require to further confirm, evidence or protect the lien of this Mortgage, the security position of Mortgagee with respect to the Mortgaged Property or any part thereof and the property and rights hereby conveyed to or conferred on Mortgagee, or intended to so be, including, without limitation, the execution, acknowledgment of delivery of additional mortgages, security agreements, financing statements, continuation statements and the like.

5.19. Expenses.

Mortgagor shall pay to Mortgagee on demand of Mortgagee any and all expenses reasonably incurred or paid by Mortgagee in connection with or incident to (a) negotiation, closing and administration of the Loan, including, without limitation, the examination of the title to the Premises, the cost of title insurance, charges for examining public records in connection with advances of the proceeds of the Loan, inspections, drawing of papers, recording and filing fees, value added taxes and other taxes, revenue stamps, if any, and fees and disbursements of attorneys, accountants, appraisers, tax advisors, architects and engineers engaged by the Mortgagee, and (b) the collection or enforcement of any or all of the Obligations or rights of the Mortgagee under the Note, the Security Instruments or any Other Document, whether by litigation, foreclosure or otherwise, including, without limitation, attorneys' fees to the extent permitted by law and further including, without limitation, attorneys' fees for any and all appellate proceedings, to the extent permitted by law; and all such expenses, until paid, shall be added to the unpaid principal of the Obligations, shall bear interest at the Default Rate, and the payment thereof, together with such interest, and shall be secured by the lien of this Mortgage and the other Security Instruments.

5.20. Required Repairs.

Mortgagor shall repair, within one hundred eight (180) days from the date hereof, all of

the cracked exterior masonry of the buildings located on the Premises as recommended in the Property Condition Assessment, revised as of October 16, 2007, prepared ATC Associated, Inc. and certified to Mortgagee (collectively, the "Required Repairs"). Immediately upon completion of the Required Repairs, but in no event later than one hundred eight (180) from the date hereof, Mortgagor shall provide evidence of the completion of said Required Repairs, which evidence shall be satisfactory to Mortgagee in its reasonable discretion. If Mortgagor fails to complete the Required Repairs (or deliver satisfactory evidence to Mortgagee of the completion of said Required Repairs) within one hundred eight (180) from the date hereof, such failure shall constitute an Event of Default.

5.21. Estoppel Certificates.

Mortgagor has, as of the date hereof, executed and delivered to Mortgagee, a landlord form estoppel certificate, in form and substance satisfactory to Mortgagee ("Landlord Estoppel Certificate") with respect to the certain Lease between Mortgagor and Walgreen. Mortgagor shall, within thirty (30) days from the date hereof, obtain from Walgreen and deliver to Mortgagee, a tenant's form estoppel certificate, in form and substance satisfactory to Mortgagee ("Walgreen Estoppel Certificate"). Failure of Mortgagor to comply with the provisions of this Section 5.21 shall constitute an Event of Default.

5.22. Undertakings.

Mortgagor shall, within thirty (30) days from the date hereof, obtain and deliver to Mortgagee, Subordination, Non-Disturbance and Attornment Agreements from each of the following Lessees: (i) JPMorgan Chase Bank, N.A., and (ii) FAC West Donuts, LLC. Mortgagor shall pay all costs and expenses incurred by Mortgagee in connection with such Subordination, Non-Disturbance and Attornment Agreements, including, without limitation, reasonable attorneys' fees. Failure of Mortgagor to comply with the provisions of this Section 5.22 shall constitute an Event of Default.

Section 6. Assignment of Leases and Rents.

6.1. Mortgagor does hereby transfer, assign and deliver unto Mortgagee, grant to Mortgagee a security interest in, the Leases and the Rents and all right, title and interest of Mortgagor in and to any and all guarantees of any of the Leases; TO HAVE AND TO HOLD the Leases and the Rents and said guarantees, together with all the rights, privileges and appurtenances now or hereafter in any wise belonging or pertaining thereto, unto Mortgagee, its successors and assigns, forever, subject, however, to the terms and conditions hereinafter provided in this Section 6. Mortgagee shall have all rights against tenants of the Mortgaged Property as set forth in Section 291-f of the Real Property Law of New York.

6.2. Mortgagor hereby authorizes and empowers Mortgagee to collect the Rents as the same shall become due, and hereby irrevocably directs each and all of the Lessees and sublessees to pay to Mortgagee, upon demand by Mortgagee, the Rents as may now be due or payable and/or shall hereafter become due or payable; provided however, no such demand shall be made by Mortgagee unless and until there shall have occurred a default or an Event of Default hereunder beyond any applicable notice and cure period. Until such demand is made, Mortgagor

shall have the license to collect or continue to collect the Rents; upon such demand such license shall cease.

6.2.1 Mortgagor's right to collect or to continue to collect the Rents as aforesaid, shall not authorize collection by Mortgagor of any installment of rent or any other payment (exclusive of security deposits) more than one (1) month in advance of the respective dates prescribed in the Leases or otherwise for the payment thereof without the written consent of Mortgagee.

6.2.2 No lessee, sublessee, tenants or other occupant of the Mortgaged Property making any payment to Mortgagee pursuant to this Section 6 shall be under any obligation to inquire into or determine the actual existence of any default claimed by Mortgagee.

6.3. Mortgagee shall be and hereby is authorized and empowered, for and in the name or names and on behalf of Mortgagor and/or Mortgagee, and for the purposes hereinafter set forth, shall be and hereby is made, constituted and appointed the true and lawful attorney-in-fact of Mortgagor (with full power of substitution and revocation) and in the name, place and stead of Mortgagor, and in the sole and uncontrolled discretion of said attorney, to cause the assignment to Mortgagee of any Lease which has not been so assigned after request therefor by Mortgagee. The foregoing appointment, being coupled with an interest, is irrevocable until the Obligations are paid and otherwise satisfied in full.

6.4. Mortgagor shall not enter into any Lease in excess of 2,000 square feet without first obtaining Mortgagee's written approval of the terms and conditions thereof and the Lessee thereunder, which approval shall not be unreasonably withheld or delayed. In the event Mortgagor intends to enter into any Lease for less than 2,000 square feet, Mortgagor shall promptly notify Mortgagee of the terms and conditions thereof. If requested by Mortgagor, Mortgagee will grant conditional approvals of proposed Leases requiring Mortgagee's approval hereunder or proposed renewals, extensions or modifications of existing Leases at any stage of the leasing process, from initial "term sheet" through negotiated Lease drafts; provided, however, that the final approval of Mortgagee shall only be given following receipt of a final draft version of the Lease in question. Provided that no Event of Default is continuing, if Mortgagor provides Mortgagee with a written request for approval (which written request shall specifically refer to this Section 6.4 and shall explicitly state that failure by Mortgagee to approve or disapprove within ten (10) business days will constitute a deemed approval) and Mortgagee fails to reject the request in writing delivered to Mortgagor within ten (10) business days after receipt by Mortgagee of the request, the proposed Lease or proposed renewal, extension or modification of an existing Lease shall be deemed approved by Mortgagee, and Mortgagor shall be entitled to enter into such proposed Lease or proposed renewal, extension or modification of an existing Lease.

6.5. Notwithstanding anything in this Section 6 to the contrary, at Mortgagor's written request, Mortgagee shall enter into a subordination non-disturbance and attornment agreement on Mortgagee's then-current standard form with any national tenant or any other creditworthy tenant leasing in excess of ten (10%) percent of the Mortgage Property. Mortgagor shall reimburse Mortgagee upon demand for all reasonable costs and expenses incurred by Mortgagee

in connection with the preparation and negotiation of such subordination, non-disturbance and attornment agreements.

6.6. The provisions of the Assignment of Leases and Rents and the powers granted to Mortgagee under Section 9 hereof shall in no respect operate to place upon Mortgagee any responsibility or obligation to take any action whatsoever with respect to the operation, control, care, management or repair of the Mortgaged Property and that any action taken or failure or refusal to act by Mortgagee shall be at Mortgagee's election and without any liability on its part.

Section 7. Security Agreement.

7.1. This Mortgage also shall constitute a security agreement, financing statement, and fixture filing within the meaning of the applicable Uniform Commercial Code, and is to be filed or recorded in the office where a mortgage on the Premises would be filed or recorded.

7.2. Mortgagor warrants and covenants that:

7.2.1 Except for the security interest granted hereby, Mortgagor is, or upon acquiring rights in any of the Collateral will be, the owner of the Collateral free from any other lien, security interest or encumbrance; and Mortgagor will defend the security interest of the Mortgagee in the Collateral against claims and demands of all persons at any time claiming the same or any interest therein; and

7.2.2 No financing statement covering any Collateral is on file in any public office, and at the request of Mortgagee, Mortgagor will join with Mortgagee in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee and will pay the cost of filing or recording the same in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable.

7.3. Mortgagor hereby authorizes Mortgagee to file financing and continuation statements with respect to the Collateral without the signature of Mortgagor whenever lawful.

7.4. The Personal Property will be kept at the Premises, and until installed will be suitably and safely stored thereon.

7.5. Mortgagor will not remove or permit to be removed from the subject property any of the Personal Property without the prior written consent of Mortgagee unless the same is immediately replaced with unencumbered fixtures, chattels or articles of personal property, as the case may be, of a quality, value and utility equal or superior to those which they replace. All such replacements, renewals and additions shall become and be immediately subject to the security interest of this Mortgage and be covered thereby.

7.6. Mortgagor, from time to time, on request of Mortgagee, shall deliver to Mortgagee an inventory of the Personal Property in reasonable detail, including an itemization of all items leased to Mortgagor or subject to conditional bill of sale, security agreement or other title retention agreement.

Section 8. Events of Default.

The occurrence of any one or more of the following events shall constitute an Event of Default:

8.1. Nonpayment of any installment of principal and/or interest due under the Note when it shall become due and payable (no prior demand therefore being necessary) and such nonpayment shall have continued for more than ten (10) days.

8.2. Nonpayment of any other sum payable under this Mortgage, the Note, any of the other Security Instruments or any of the Other Documents and, unless a different grace or notice period is elsewhere specified, such nonpayment shall have continued for more than ten (10) days after notice thereof from Mortgagee to Mortgagor.

8.3. Nonperformance or nonobservance of any of the other covenants, agreements, or conditions of this Mortgage, any of the other Security Instruments or any of the Other Documents, and, unless a different grace or notice period is elsewhere specified, such nonperformance or nonobservance shall have continued for more than thirty (30) days after notice thereof from Mortgagee to Mortgagor; provided, however, that if (a) the curing of such default cannot be accomplished with due diligence within said thirty (30) day period, (b) Mortgagor commences to cure such default promptly after receipt of notice thereof from Mortgagee and thereafter diligently and continuously prosecutes the cure of such default, and (c) the extension of the period for effecting a cure will not result in any material impairment of the Mortgaged Property or any portion thereof, or the value thereof or Mortgagee's lien thereon, then such period of thirty (30) days shall be extended for such period of time as Mortgagee reasonably deems necessary for Mortgagor so acting to cure such default; provided further, however, such extended cure period shall not be applicable to any default which may be cured by the payment of money only. The foregoing shall not be deemed to provide a grace or notice period for nonperformance or nonobservance of any covenant, agreement or condition which is specifically listed as an Event of Default in any other subsection of this Section 8.

8.4. The occurrence of any "Event of Default" under the Note, any of the other Security Instruments or any of the Other Documents, or the occurrence of any event or condition which would entitle Mortgagee to exercise any of its remedies under any of the Security Instruments or any of the Other Documents.

8.5. Title to the Mortgaged Property is not satisfactory to the Mortgagee by reason of any lien, charge, encumbrance, title condition or exception (other than Permitted Encumbrances) and such condition continues for more than thirty (30) days after notice thereof from Mortgagee to Mortgagor.

8.6. Any survey, report or examination discloses that the Improvements or any portion thereof encroach upon or project over a street or upon or over adjoining property, and such condition shall have continued for more than thirty (30) days after notice thereof from Mortgagee to Mortgagor.

8.7. The cancellation, lapse or termination of any insurance coverage required to be maintained by Mortgagor under this Mortgage or any of the other Security Instruments.

8.8. The Mortgaged Property or any part thereof or any interest therein is conveyed, voluntarily encumbered or otherwise transferred directly or indirectly in any way without the prior written consent of Mortgagee.

8.9. If any notice of responsibility, notice of violation, notice letter or other similar notice or claim is issued or filed by the EPA or any State Agency against Mortgagor or the Mortgaged Property under any of the Hazardous Waste Laws and within sixty (60) days after the issuance or filing thereof either (a) the condition referenced therein is not cured or (b) a consent agreement reasonably satisfactory to Mortgagee has not been entered into between Mortgagor and the EPA or the State Agency in question.

8.10. Breach of, or the proving false or misleading, in any material respect, of any representation or warranty now or hereafter made to Mortgagee by on behalf of, or for the benefit of Mortgagor, or contained in:

(a) any of the Security Instruments or Other Documents;

(b) the Note; or

(c) any loan application, statement, financial statement, certificate or other document, agreement or instrument furnished, signed or executed in connection herewith by, on behalf of, or for the benefit of Mortgagor.

8.11. The occurrence of any "event of default" under any document, agreement or instrument now or hereafter (a) evidencing or securing any other obligation or indebtedness of Mortgagor or any Other Liable Party to Mortgagee now existing or hereafter arising or (b) evidencing any obligation or other indebtedness secured in whole or in part by any or all of the property covered by any of the Security Instruments, or the nonpayment nonperformance or nonobservance of any of the covenants, agreements or conditions of any such documents, agreements or instruments, which nonpayment, nonperformance or nonobservance shall have continued beyond the expiration of any applicable grace or notice period, or the occurrence of any event or condition which would entitle the obligee of or under any such documents, agreements or instruments to exercise any of its remedies thereunder.

8.12. Nonpayment of any indebtedness of the Mortgagor or any Other Liable Party (other than the Note or other indebtedness referred to in the preceding subsection) if the effect of such nonpayment is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to the stated maturity thereof, or if any other indebtedness, the validity of which is not being contested in good faith by appropriate proceedings, is not paid when due and payable in accordance with the terms of such indebtedness or customary trade practice.

8.13. (a) (i) The insolvency or inability of Mortgagor or any Other Liable Party to pay his or its debts as they mature; (ii) the appointment of a receiver, trustee, custodian or other fiduciary, for, or for any of the property of, Mortgagor or any Other Liable Party; (iii) the making of an assignment for the benefit of creditors, or the making of or entering into a trust mortgage or deed or other instrument of similar import for the benefit of creditors, by Mortgagor or any Other Liable Party; or (iv) the convening of a meeting of the creditors, or the selection of a committee representing the creditors of Mortgagor or any Other Liable Party; or

(b) The filing of a petition, complaint, motion or other pleading seeking any relief under any receivership, insolvency, or debtor relief law, or seeking any readjustment of indebtedness, reorganization, composition, extension or any similar type of relief, or the filing of a petition, complaint, or motion under any chapter of the Bankruptcy Code, by Mortgagor or any Other Liable Party; or

(c) The filing of a petition, complaint, motion or other pleading seeking any relief under any receivership, insolvency, or debtor relief law, or under any chapter of the Bankruptcy Code, or seeking any readjustment of indebtedness, reorganization, composition, extension or any similar type of relief, or the entry of any order for relief under any chapter of the Bankruptcy Code, against Mortgagor or any Other Liable Party; provided, however, that if Mortgagor shall immediately notify Mortgagee in writing of the filing of any such petition complaint, motion or other pleading against Mortgagor or any Other Liable Party, and shall provide evidence satisfactory to Mortgagee that Mortgagor or such Other Liable Party, as the case may be, has in good faith and within ten (10) days after the filing of any such petition, complaint, motion or other pleading filed an answer thereto contesting same, then there shall be no Event of Default under this subparagraph (c) until the earliest of (i) the entry of an order for relief or a judgment under any proceedings referred to in this subparagraph (c), (ii) the appointment of a receiver, trustee, custodian or other fiduciary in any such proceeding or (iii) the expiration of a period of thirty (30) days, at the end of which such petition, complaint, motion or other pleading remains undismissed; or

(d) The entry of any judgment against, or the attachment or garnishment of any of the property, goods or credits of, Mortgagor or any Other Liable Party which remains unpaid, unstayed, undismissed or unbonded for a period of thirty (30) days; or if any foreclosure is instituted (by judicial proceedings, by publication of notice pursuant to a power of sale or otherwise) against Mortgagor under any mortgage, deed of trust or security agreement granted by Mortgagor and is not dismissed or terminated for a period of fifteen (15) days.

8.14. The dissolution, liquidation or termination of existence of Mortgagor or any Other Liable Party or a sale of assets of Mortgagor or any other Liable Party out of the ordinary course of business.

8.15. Any material adverse change in the financial condition of, or any act or omission of Mortgagor or any Other Liable Party, or any act or omission of any officer or director of Mortgagor or any Other Liable Party which leads Mortgagee reasonably to believe that performance of any of the covenants, agreements, or conditions of the Note, any of the Security Instruments or any Other Document, is or may be substantially impaired.

8.16. The death, incompetence, or incapacity to act of any Guarantor, unless a replacement guarantor is provided by Mortgagor within ninety (90) days of such death, which replacement guarantor shall be acceptable to Mortgagee in its sole discretion and which replacement guarantor, together with the other Guarantor, satisfies the financial covenants set forth in the Security Instruments.

8.17. Except as permitted by Section 5.13 herein, (a) the transfer of any membership interest in Mortgagor or (b) the transfer of any membership interest in Mortgagor held directly or indirectly, through one or more intermediate entities, by any Guarantor or (c) the dilution of the percentage membership interest in Mortgagor held directly or indirectly, through one or more intermediate entities, by any Guarantor, without the prior written consent of Mortgagee.

8.18. The merger or consolidation with any entity by Mortgagor, or the transfer of any of the membership interests of Mortgagor by any of the present members thereof or dilution of the percentage of the membership interests in Mortgagor held by any of the present members thereof, or the acquisition of any of the membership interests of Mortgagor by any person, corporation or entity not presently a member thereof, without the prior written consent of Mortgagee.

8.19. If Mortgagor shall breach the financial covenants set forth in the Note beyond any applicable cure period.

8.20. If Mortgagor fails to promptly notify Mortgagee, in writing, and in any event within ten (10) days, of the occurrence of any event or condition of which Mortgagor is aware which constitutes a Default Condition, and together with such notice, furnish a written statement to Mortgagee which shall set forth the details of any action Mortgagor proposes to take with respect thereto.

8.21. If any Hedging Agreement (i) fails or ceases in any respect to be in full force and effect and to be continuing, (ii) is terminated, (iii) is disputed or (iv) becomes invalid or unenforceable based on Mortgagor's default thereunder.

8.22. If it becomes unlawful under the laws of the State of New York for Mortgagor to perform all or any of Mortgagor's obligations under any Hedging Agreement.

8.23. If any Hedging Agreement is not, or is alleged by Mortgagor not to be, binding on or enforceable against Mortgagor or effective to create the security intended to be created by it.

Section 9. Remedies.

9.1. Rights Upon Default.

Upon the occurrence of any Event of Default beyond any applicable notice and cure period hereunder, Mortgagee, in addition to the remedies provided above, shall have each and every of the following rights and remedies, all of which rights and remedies shall be cumulative

and not exclusive and in addition to any and all other rights and/or remedies granted to Mortgagee under this Mortgage, the Note, any of the other Security Instruments or Other Documents:

9.1.1 Mortgagee shall have the right forthwith, at its election, to exercise any and all rights and remedies available to it at law or in equity.

9.1.2 Mortgagee shall have the right forthwith, at its election, and without further notice or demand (except as otherwise specifically provided in the Note, this Mortgage or the other Security Instruments) and without the commencement of any action to foreclose this Mortgage or exercise any power of sale Mortgagee may have under this Mortgage, to enter immediately upon and take possession of the Mortgaged Property, or any part thereof, without further consent or assignment by Mortgagor, and to do, execute and perform any act, deed, matter or thing whatsoever that ought to be done, executed and performed in and about or with respect to the Mortgaged Property and the leasing, management, or operation thereof as fully as Mortgagor might do, including, without limitation, the right to institute summary proceedings against any Lessee who shall fail to comply with the provisions of the applicable Lease, with the right to lease the Mortgaged Property, or any part thereof, and to collect and receive all of the Rents, issues and profits, and all other amounts past due or to become due to Mortgagor by reason of its ownership of the Mortgaged Property and to apply the same, after the payment of all necessary charges and expenses in connection with the operation of the Mortgaged Property (including, without limitation, any managing agent's commission, at the option of Mortgagee), on account of the Obligations. If Mortgagor or any other person claiming by, through or under it, (other than any Lessee whose tenancy Mortgagee has agreed not to disturb or whose tenancy Mortgagee, in its sole and uncontrolled discretion, is willing not to disturb) are occupying all or any part of the Mortgaged Property, it is hereby agreed that Mortgagor and such other persons shall either immediately surrender possession of the Mortgaged Property to Mortgagee and vacate the premises so occupied or pay a reasonable rental for the use thereof, monthly in advance, to Mortgagee.

9.1.3 Mortgagee shall have the right to seek the immediate appointment by any court of competent jurisdiction of a receiver for the Mortgaged Property and the business of Mortgagor in connection therewith and of the Rents and profits arising therefrom, which receiver shall be entitled to immediate possession of the entire Mortgaged Property, whether or not occupied by Mortgagor. Mortgagee shall be entitled to the appointment of such a receiver as a matter of right without consideration of the value of the Mortgaged Property or other security for the Obligations or the solvency of any person or corporation liable for the payment thereof. If Mortgagor is then in possession of the Mortgaged Property or any part thereof, Mortgagor shall immediately, upon the appointment of such receiver, vacate the Mortgaged Property or such part thereof, as the case may be, or pay a reasonable rental for the use thereof during such receivership, the amount of such rental to be agreed upon between said receiver and Mortgagor or to be fixed by the court in which said receiver shall have been appointed; and the relationship between said receiver and Mortgagor shall be that of landlord and tenant.

9.1.4 Mortgagee, to the extent permitted by law, may choose to utilize the procedures set forth in Article 14 of the Real Property Actions and Proceedings Law and

commence a non-judicial foreclosure by power of sale of this Mortgage. To the extent permitted by law, Mortgagor waives any right granted pursuant to Section 1421, or any other provision of the Real Property Actions and Proceedings Law, to challenge Mortgagee's election to enforce this Mortgage by means of such non-judicial power of sale unless Mortgagor in good faith believes there is one or more specific factual, meritorious defenses to the foreclosure action.

9.2. Mortgagee's Right to Release and Negotiate.

Without affecting the liability of Mortgagor or any Other Liable Party (except any person expressly released in writing), and without affecting any lien or other security not expressly released in writing, Mortgagee, at any time and from time to time, either before or after maturity of the Note, irrespective of whether any Default Condition then exists and without notice or consent, may do any one or more of the following:

(a) release any person liable for payment of or performance of any or all of the Obligations;

(b) make any agreement extending the time, or otherwise altering the terms of payment of the Obligations or any part thereof, or modifying or waiving any of the Obligations, or subordinating, modifying or otherwise dealing with the lien or liens securing payment of the Obligations;

(c) exercise or refrain from exercising or waive any right Mortgagee may have;

(d) accept additional security of any kind;

(e) release or otherwise deal with any property, real or personal, securing the Obligations or any part thereof, including all or any part of the Mortgaged Property; and

(f) (in the event of any conveyance of Mortgagor's interest in the Mortgaged Property to parties not appearing in this instrument), deal with such successor or successors in interest with reference to this Mortgage and the Obligations secured hereby, either by way of forbearance on the part of Mortgagee or extension of the time of payment of the Note or any other sum forming part of the Obligations, or otherwise, without in any way modifying or affecting the conveyance under this Mortgage or the original liability of Mortgagor for the Obligations, either in whole or in part. Nothing in this subsection, however, shall be deemed a consent by Mortgagee to the conveyance by Mortgagor of any interest in the Mortgaged Property.

9.3. Mortgagor to Surrender Possession.

In the event of any sale of the Mortgaged Property under the provisions hereof, Mortgagor shall forthwith surrender possession thereof to the purchaser. Upon failure to do so, Mortgagor shall thereupon be a tenant at sufferance of such purchaser, and upon its failure to surrender possession of the Mortgaged Property upon demand, such purchaser, his heirs, legal

representatives, successors or assigns, shall be entitled to institute and maintain an appropriate action for possession of the Mortgaged Property.

9.4. Uniform Commercial Code. Upon the occurrence of any Event of Default, Mortgagee shall have and may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code then in effect in the state in which the Premises is located. Without limiting the generality of the foregoing:

(a) Mortgagee, at its option, pursuant to the applicable provisions of Article 9 of the Uniform Commercial Code, may proceed as to both the real and personal property covered by this Mortgage in accordance with its rights and remedies in respect of said real property, in which event (i) the other provisions of the Uniform Commercial Code shall not apply to disposition of the Collateral, and (ii) the sale of the Collateral in conjunction with and as one parcel with said real estate shall be deemed to be a commercially reasonable manner of sale; or

(b) Mortgagee, at its option, may proceed as to the Collateral separately from said real property, in which event the requirement of reasonable notice shall be met by mailing notice of the sale, postage prepaid, to Mortgagor or any other person entitled thereto at least ten (10) days before the time of the sale or other disposition of any of the Collateral.

Section 10. Miscellaneous.

10.1. Notices. Any notice, demand, request, instruction, document, or other communication to be given under or in connection with this Mortgage shall be in writing and hand-delivered, receipt requested or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by Federal Express or other similar courier service, addressed as follows:

If to Mortgagee:

Anglo Irish Bank Corporation plc
Stephen Court
18/21 St. Stephen's Green
Dublin 2, Ireland
Attn: Owen O'Neill, Director

Copy by ordinary
first class mail to:

Anglo Irish New York Corporation
222 East 41st Street, 24th Floor
New York, New York 10017
Attn: Peter Lennon, Vice President

and

Sullivan & Worcester LLP
1290 Avenue of the Americas
New York, New York 10104
Attn: Hugh P. Finnegan, Esq.

If to Mortgagor:

Acadia Tarrytown LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attn.: Robert Masters, Esq.

Copy by ordinary
first class mail to:

Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attn.: Robert Masters, Esq.

Any party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other party in the manner herein provided for giving notice. Any such notice, demand, request, or other communication shall be deemed given when mailed as aforesaid.

10.2. Captions. The captions in this Mortgage are for convenience and reference only and do not define, limit or describe the scope of the provisions hereof.

10.3. Modifications. The provisions of this Mortgage may be modified or terminated only in a writing signed by Mortgagor and Mortgagee.

10.4. Non-Waiver. Mortgagee shall not be deemed to have waived or amended any of its rights or remedies under any of the Loan Documents unless such waiver or amendment be in writing and signed by it. No delay or omission on the part of Mortgagee in exercising any such right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or a waiver of the same right or remedy on any future occasion. Without limiting the generality of the foregoing, the acceptance by Mortgagee of any sum after the occurrence of any Event of Default shall not constitute a waiver of the right to require prompt performance of all of the covenants and conditions contained in the Loan Documents. The acceptance by Mortgagee of any sum less than the sum then due shall be deemed an acceptance on account only and shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum due shall be and continue to be an Event of Default notwithstanding such acceptance of such lesser amount on account, and Mortgagee shall be entitled at all times thereafter to

exercise all rights and remedies conferred upon it following an Event of Default, notwithstanding the acceptance by Mortgagee thereafter of future sums on account.

10.5. Cumulative Nature of Rights and Remedies. The rights and remedies provided Mortgagee in the Loan Documents and any of them, or otherwise available by law, shall be cumulative and may be exercised concurrently or successively. Any one or more of such rights or remedies may be exercised by Mortgagee, at its option, without regard to the adequacy of its security.

10.6. Limitation of Third-Party Rights. The Mortgagor and Mortgagee do not intend the benefits of any one or more of the Loan Documents to inure to, or otherwise exist for, the benefit of any third party who has a contractual relationship with Mortgagor, who is a creditor of Mortgagor with respect to the Mortgaged Property, or any part thereof, or who otherwise succeeds to Mortgagor's interest or rights, and none of the Loan Documents shall be construed to make or render Mortgagee liable to any materialman, supplier, contractor, subcontractor, successor in title to the Mortgaged Property, or any part thereof, or any Lessee, or for debts or claims accruing to any such persons against Mortgagor. Notwithstanding anything contained in any of the Loan Documents, or any conduct or course of conduct by Mortgagor or Mortgagee or both, whether before or after signing this Mortgage, none of the Loan Documents shall be construed as creating any right, claim or cause of action against Mortgagee, or any of its officers, directors, agents or employees, in favor of any materialman, supplier, contractor, subcontractor, successor in title to the Mortgaged Property, or any part thereof, or any Lessee or to any other person, corporation or other entity, other than Mortgagor.

10.7. Interpretation. Mortgagor acknowledges that Mortgagor, Mortgagee and their respective counsel have reviewed and revised the Loan Documents and the Commitment Letter and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of the Loan Documents or said Commitment Letter.

10.8. Assignability of Mortgagee's Interest. Mortgagee may assign, negotiate, or pledge all or any portion of its rights under the Loan Documents or any of them, and, in case of such assignment, Mortgagor shall accord full recognition thereto. Without limiting the generality of the foregoing, Mortgagee shall have the right to sell or otherwise grant participations in the Loan to one or more of the participating financial institutions and to disclose all information in its possession with respect to Mortgagor and the Mortgaged Property to such institutions; Mortgagor shall cooperate with Mortgagee, if requested by Mortgagee, with respect to any of Mortgagee's efforts to obtain such participants.

10.9. Integration. The Loan Documents and the Commitment Letter reflect the entire agreement between Mortgagor and Mortgagee; provided, however, to the extent there shall exist a conflict between any term or provision of the Commitment Letter and any term or provision of the Loan Documents, the term or provision of the Loan Documents shall prevail.

10.10. Singular Includes Plural. Every word herein purporting to the neuter gender only shall extend to and include males and females and every word herein importing the singular number only shall be construed to extend to and include the plural number also.

10.11. Severability. In the event any term or provision of this Mortgage or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Mortgage or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall be valid and enforceable to the fullest extent permitted by law.

10.12. Governing Law. This Mortgage shall be construed in accordance with and governed by the laws of the State of New York in the United States of America, without resort to that state's conflict of laws rules.

10.13. Incorporation of Exhibits. All Exhibits referred to in this Mortgage are by such references fully incorporated herein.

10.14. Successors and Assigns Bound. This Mortgage shall inure to the benefit of and be binding on the successors and assigns of Mortgagee and the heirs, legal representatives, successors and assigns of Mortgagor; provided, however, the foregoing shall not be deemed to allow any assignment by Mortgagor in violation of the terms hereof.

10.15. Waiver of Jury Trial. Mortgagor and Mortgagee by acceptance of this Mortgage, expressly acknowledge and agree that the Loan involves a sophisticated commercial real estate finance transaction and that disputes arising in connection with the Loan would be most fairly resolved by a judge applying applicable federal and state laws, rather than by arbitration rules or jury trial. To the fullest extent permitted by law, Mortgagor hereby waives, for Mortgagor and Mortgagor's heirs, legal representatives, successors and assigns, and by acceptance of this Mortgage, Mortgagee hereby waives, for itself, its successors and assigns, any right to a trial by jury in respect to any litigation directly or indirectly arising out of, under, or in connection with this Mortgage, the Note or any of the other Loan Documents. Mortgagor hereby (a) certifies that no employee, attorney or other agent or representative of Mortgagee has represented, expressly or otherwise, that Mortgagee, in the event of litigation, would not seek to enforce the foregoing waiver, and (b) acknowledges that Mortgagee has been induced to make the Loan, by, among other things, the waiver, acknowledgments and certification contained in this subsection.

Section 11. State of New York Provisions.

11.1. Non-Residential Property. This Mortgage does not cover real property principally improved by one or more structures containing in the aggregate six (6) or less residential dwelling units having their own separate cooking facilities.

11.2. Trust Fund. Pursuant to Section 13 of the Lien Law of New York, Mortgagor shall receive the advances secured by this Mortgage and shall hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of any improvement on the Mortgaged Property before using any part of the total of the same for any other purpose.

11.3. Liability. If Mortgagor consists of more than one person or entity, the obligations and liabilities of each such person or entity hereunder shall be joint and several.

11.4. Multiple Parcels. In addition to all other rights and remedies of Mortgagee set forth herein, upon the occurrence of an Event of Default, Mortgagee may institute a non-judicial foreclosure proceeding in compliance with applicable law in effect on the date foreclosure is commenced (including, without limitation, non-judicial foreclosure proceedings pursuant to New York Real Property Actions and Proceedings § 1401 et seq.) for Mortgagee to sell the Premises either as a whole or in separate parcels as Mortgagee may determine at public sale or sales to the highest bidder for cash, in order to pay the Indebtedness. If the Premises is sold as separate parcels, Mortgagee may direct the order in which the parcels are sold. Mortgagee shall deliver to the purchaser a Mortgagee's deed or deeds without covenant or warranty, express or implied. Mortgagee may postpone the sale of all or any portion of the Premises by public announcement at the time and place of sale, and from time to time may further postpone the sale by public announcement in accordance with applicable law.

11.5. Maximum Amount Secured. Notwithstanding anything contained herein to the contrary, the maximum amount of indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is (i) the principal sum of NINE MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (US\$9,800,000.00) plus interest and late charges thereon (at such rates as provided for in the Note or herein, as applicable), plus (ii) amounts expended by Mortgagee to maintain the lien of this Mortgage or to protect the property secured by this Mortgage, including, without limitation, amounts in respect of insurance premiums, real estate taxes, litigation expenses to prosecute or defend the rights, remedies and lien of this Mortgage or title to the Mortgaged Property secured hereby, and any costs, charges or amounts to which Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority, together with interest on all the foregoing amounts at such rates as provided for in the Note or herein, as applicable.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed, under seal, hereunto duly authorized, as of the date first above written.

ACADIA TARRYTOWN LLC,
formerly known as
Acadia-Noddle Tarrytown Development Co., LLC,
a New York limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

State of _____)
: ss:
County of _____)

On this ___ day of _____, 2007, before me, the undersigned notary public, personally appeared Robert Masters, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

(official signature and seal of notary)

Execution Page-Mortgage Consolidation and Modification Agreement

EXHIBIT A
Legal Description

EXHIBIT B

Permitted Encumbrances

EXHIBIT C

The term "Notes" shall mean all of the notes secured by the mortgages set forth below and "Mortgages" shall mean, collectively:

1. Mortgage made by RMC Development Company, LLC in favor of Emigrant Savings Bank in the principal amount of \$2,000,000.00, dated as of September 9, 1999 and recorded April 25, 2000 in the Office of the County Clerk, Westchester County (the "Register's Office") under Control Number 400410557, as assigned by Assignment of Mortgage made by Emigrant Savings Bank to Acadia Realty Limited Partnership, dated May 13, 2004 and recorded April 8, 2005 in the Register's Office under Control Number 450620831, and as further assigned by an Assignment of Mortgage made by Acadia Realty Limited Partnership to Mortgagee, dated as of October 30, 2007 and intended to be recorded in the Register's Office simultaneously herewith.

2. Mortgage, dated the date hereof, in the principal amount of \$7,940,521.39, executed by Mortgagor in favor of Mortgagee and intended to be recorded in the Register's Office simultaneously herewith.

PROJECT LOAN AGREEMENT

Dated as of December 10, 2007

Between

P/A-ACADIA PELHAM MANOR, LLC,
as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
as Lender

MERS MIN: 8000101-000007140-6

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PROJECT LOAN AGREEMENT

THIS PROJECT LOAN AGREEMENT, dated as of December 10, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**” or sometimes, this “**Project Loan Agreement**”), is made by and between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (“**Lender**”) and **P/A-ACADIA PELHAM MANOR, LLC**, a Delaware limited liability company, having its principal place of business c/o Acadia Realty Trust, 1311 Mamaroneck Avenue — Suite 260, White Plains, New York 10605 (“**Borrower**”).

WITNESSETH:

WHEREAS, Borrower desires to obtain the Project Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Project Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I.

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, all capitalized terms used herein but not otherwise defined shall have their respective meanings set forth in the Building Loan Agreement and:

“**Advance**” or “**Advances**” shall mean any disbursement of the proceeds of the Project Loan by Lender pursuant to the terms of this Agreement.

“**Agreement**” shall mean this Project Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“**Building Loan**” shall mean the loan made by Lender to Borrower pursuant to the Building Loan Agreement in the principal amount of up to the Building Loan Amount.

“**Building Loan Agreement**” shall mean that certain Building Loan Agreement dated as of the date hereof between Borrower and Lender as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Building Loan Amount**” shall have the meaning set forth in the Building Loan Agreement.

“**Building Loan Assignment of Leases**” shall have the meaning set forth in the Building Loan Agreement.

“**Building Loan Documents**” shall have the meaning set forth in the Building Loan Agreement.

“**Building Loan Earn Out Advance**” shall have the meaning set forth in Section 2.12.2 hereof.

“**Building Loan Mortgage**” shall have the meaning set forth in the Building Loan Agreement.

“**Building Loan Note**” shall have the meaning set forth in the Building Loan Agreement.

“**Contingency Excess**” shall have the meaning set forth in Section 2.1.7(b) hereof.

“**Debt**” shall mean the outstanding principal amount of the Project Loan set forth in, and evidenced by, this Agreement, the Project Loan Note and the other Project Loan Documents, together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Project Loan under the Project Loan Note, this Agreement, the Project Loan Mortgage or any other Project Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, the aggregate scheduled principal and interest payments due under this Agreement and the Project Loan Note.

“**Defeasance Date**” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

“**Defeasance Event**” shall have the meaning set forth in Section 2.5.1(a) hereof.

“**Earn Out Advances**” shall have the meaning set forth in Section 2.12.2 hereof.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Final Advance**” shall have the meaning set forth in Section 2.12.1 hereof.

“**Final Building Loan Advance**” shall mean the Final Advance as defined in Section 2.12.1 of the Building Loan Agreement.

“**Home Depot**” shall have the meaning set forth in Section 2.11.15 hereof.

“**Home Depot Estoppel Certificate**” shall have the meaning set forth in **Section 2.10.8** hereof.

“**Home Depot Lease**” shall have the meaning set forth in **Section 2.11.15** hereof.

“**Indemnified Liabilities**” shall have the meaning set forth in **Section 10.13(a)** hereof.

“**Initial Advance**” shall have the meaning set forth in **Section 2.10** hereof.

“**Initial Advance Conditions**” shall have the meaning set forth in **Section 2.10** hereof.

“**Interest Period**” shall mean: (a) the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs, both dates inclusive; and (b) the period commencing on and including the first day of each calendar month thereafter during the term of Loan and ending and including the last day of such calendar month.

“**Interest Rate**” shall mean seven and one hundred eighty-two one thousandths percent (7.182%), provided, however, in the event that (a) on or before June 1, 2009, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.00, and Borrower delivers to Lender a MAI appraisal performed, at Borrower’s sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender’s internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan, Lender shall, upon Borrower’s written request, reduce the Interest Rate to a per annum rate equal to five and ninety-three one hundredth percent (5.93%), commencing on the first Payment Date after Borrower’s request, and (b) on or before June 1, 2010, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.00, and Borrower delivers to Lender a MAI appraisal performed, at Borrower’s sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender’s internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan, Lender shall, upon Borrower’s written request, reduce the Interest Rate to a per annum rate equal to five and ninety-eight one hundredth percent (5.98%), commencing on the first Payment Date after Borrower’s request. Any reduction in the Interest Rate as set forth above shall be effective commencing on the first Payment Date after Borrower’s request for such reduction and satisfaction of the conditions set forth above and no reduction in the Interest Rate shall be retroactive. In the event that Borrower fails to satisfy the conditions for a reduction of the Interest Rate within the time periods set forth above, time being of the essence, Borrower shall have no further right to obtain a reduction in the Interest Rate. **Notwithstanding anything to the contrary contained herein, Lender shall have the right, in its sole discretion, at any time**

prior to a Securitization of the Loan, to increase the Interest Rate by up to two-tenths of one percent (0.20%).

“Interest Reserve Line Item” shall mean the interest reserve Line Item of the Project Loan Budget.

“Lender” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“Loan” shall mean collectively, the Building Loan and the Project Loan.

“Loan Agreement” shall mean collectively, this Project Loan Agreement and the Building Loan Agreement.

“Loan Documents” shall mean collectively, the Building Loan Documents and the Project Loan Documents, the Environmental Indemnity, the Guaranty of Completion, the Guaranty of Recourse Carveouts, the Cash Management Agreement, the Clearing Account Agreement, the Collateral Assignment of Condominium Documents, the Assignment of Contracts, the Administration Fee Agreement, the Rate Lock Agreement and all other documents executed and/or delivered in connection with the Loan.

“Maturity Date” shall mean January 1, 2020 or such earlier date on which the final payment of principal of the Project Loan Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“Monthly Debt Service Payment Amount” shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with **Section 2.2** hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in January, 2013, and (b) a constant monthly payment of **\$85,625.17** commencing with the Payment Date occurring in February, 2013 and on each Payment Date thereafter, provided, however, that in the event that the Interest Rate is modified in accordance with the provisions of the definition of “Interest Rate,” the Monthly Debt Service Payment Amount shall be adjusted by Lender based upon the modified Interest Rate and a thirty (30) year amortization schedule, Lender’s determination of the Monthly Debt Service Payment Amount being binding absent manifest error.

“MERS” shall have the meaning set forth in **Section 10.25** hereof.

“Open Period Date” shall have the meaning set forth in **Section 2.4.1** hereof.

“Other Debt” shall mean the **“Debt”** as defined in both the Building Loan Agreement and the Mezzanine Loan Documents, if applicable.

“Other Obligations” shall have the meaning as set forth in the Mortgage.

“**Payment Date**” shall mean February 1, 2008, and the 1st day of every month thereafter during the term of the Loan until and including the Maturity Date or, if such day is not a Business Day, the immediately preceding Business Day.

“**Prepayment Date**” shall have the meaning set forth in Section 2.4.4 hereof.

“**Project Loan**” shall mean the loan being made by Lender to Borrower pursuant to this Project Loan Agreement in the principal amount of up to the Project Loan Amount.

“**Project Loan Amount**” shall mean Twelve Million Six Hundred Thirty-Seven Thousand Ninety-Three and 40/100 Dollars (\$12,637,093.40).

“**Project Loan Assignment of Leases**” shall mean that certain Project Loan Assignment of Leases and Rents, dated the date hereof, from Borrower, as assignor, to Lender, as assignee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Project Loan Documents**” shall mean, collectively, this Agreement, the Project Loan Note, the Project Loan Mortgage, the Project Loan Assignment of Lease as well as all other documents not or hereafter executed and/or delivered with respect to the Project Loan.

“**Project Loan Earn Out Advance**” shall have the meaning set forth in Section 2.12.2 hereof.

“**Project Loan Mortgage**” shall mean that certain Project Loan Fee and Leasehold Mortgage and Security Agreement dated the date hereof, executed and delivered by Borrower to Lender as security for the Project Loan and encumbering the Property, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Project Loan Note**” shall mean that certain Project Loan Promissory Note, dated the date hereof, in the principal amount of up to the Project Loan Amount made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Required Equity Funds**” shall have the meaning set forth in Section 2.11.13.

“**Retaining Wall Letter**” shall have the meaning set forth in Section 2.10.10 hereof.

“**Scheduled Defeasance Payments**” shall have the meaning set forth in Section 2.5.1(b) hereof.

“**Security Agreement**” shall have the meaning set forth in Section 2.5.1(a)(y) hereof.

“**Severed Loan Documents**” shall have the meaning set forth in Section 8.2(c), hereof.

“**Shortfall**” shall have the meaning set forth in **Section 2.1.10** hereof.

“**Successor Borrower**” shall have the meaning set forth in **Section 2.5.3** hereof.

Section 1.2 **Principles of Construction.**

(a) All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Any reference in this Agreement or in any other Loan Document to any Loan Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution therefor). Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

(b) With respect to any cross-reference to the Building Loan Documents or the Project Loan Documents or any combination thereof, as the case may be, for terms defined therein or provisions set forth therein or Schedules or Exhibits thereto, such cross-references shall be to referenced defined terms or provisions or Schedules or Exhibits, as the case may be, as the same are set forth in the Building Loan Documents or the Project Loan Documents or any combination thereof, as the case may be, as of the date hereof, and as the same may be amended, modified, supplemented, extended, replaced or restated or any combination thereof from time to time, and shall survive the repayment or satisfaction of the Building Loan or the Project Loan as the case may be, or the termination of the Building Loan Agreement or this Agreement or any combination thereof, as the case may be, for so long as the Project Loan remains outstanding.

ARTICLE II.

GENERAL TERMS

Section 2.1 **Loan Commitment; Disbursement to Borrower.**

2.1.1 *Agreement to Lend and Borrow.* Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept Advances in respect of the Project Loan as more particularly set forth in **Section 2.10**.

2.1.2 *No Reborrowings.* Any amount borrowed and repaid hereunder in respect of the Building Loan may not be reborrowed.

2.1.3 *The Note, Mortgage and Loan Documents.* The Project Loan shall be evidenced by the Project Loan Note and secured by the Project Loan Mortgage, the Project Loan Assignment of Leases and the other Project Loan Documents.

2.1.4 *Use of Proceeds.* Borrower hereby agrees that Borrower shall use the proceeds of the Project Loan to pay or reimburse itself for Project-Loan Costs actually incurred

in connection with the construction of the Project Improvements if and to the extent that such Project-Loan Costs are reflected in the Project Loan Budget, subject to reallocation pursuant to **Sections 2.1.6** and **2.1.7** hereof, and **5.1.33** of the Building Loan Agreement (or other reallocations approved by Lender in its sole discretion).

2.1.5 **Advances**. The Project Loan Budget shall reflect, by category and line item, the purposes and amounts for which funds to be advanced by Lender under this Agreement are to be used. Lender shall not be required to Advance funds hereunder for any category or line item of Project Loan Costs in excess of the amount specified for such line item or category in the Project Loan Budget, subject to **Sections 2.1.6** and **2.1.7** hereof and **5.1.33** of the Building Loan Agreement (or other reallocations approved by Lender in its sole discretion). No Advances shall be made to pay for Affiliate Fees.

2.1.6 **Cost Overruns**. If Borrower becomes aware of any change in actual or projected Project Loan Costs which will increase any one or more category or line item of costs reflected in the Project Loan Budget, Borrower shall immediately notify Lender in writing and promptly submit to Lender for its approval a revised Project Loan Budget. Any reallocation of any category or line items in the Project Loan Budget in connection with cost overruns shall be subject to Lender's approval in Lender's sole discretion except as set forth in **Sections 2.1.7** hereof and **5.1.33** of the Building Loan Agreement, provided, however, under no circumstances shall Borrower be permitted, or Lender obligated to approve, the reallocation of line items from the Building Loan Budget to the Project Loan Budget. Lender shall have no obligation to make any further Advances unless and until the revised Project Loan Budget so submitted by Borrower is approved by Lender and Borrower has satisfied its obligations with respect to any resulting Shortfall under **Section 2.1.10**. Lender reserves the right to approve or disapprove any revised Project Loan Budget in its sole and absolute discretion (except with respect to reallocations in accordance with **Sections 2.1.7** and **5.1.33**).

2.1.7 **Contingency Reserve**.

(a) Following the satisfaction of the Initial Advance Conditions, and subject to the prior approval of Lender in its sole discretion, Borrower may revise the Project Loan Budget to move amounts available under any Line Item that are designated to "Contingency" to other Line Items in the Project Loan Budget. In no event may the Contingency Line Item of the Building Loan Budget be reallocated to any Line Item in the Project Loan Budget. Provided no Event of Default exists and with Lender's consent (which shall not be unreasonably withheld), after Completion of the Improvements, Borrower may draw amounts available under the Contingency Line Item of the Project Loan Budget to fund Shortfalls in monthly interest due, which amounts shall be deposited in the Interest Reserve. Such drawing shall be in addition to any Interest Reserve Line Item advanced under the Project Loan pursuant to **Section 2.14.10** hereof.

(b) Following the occurrence of Final Completion, Lender shall reasonably cooperate with Borrower to amend the Project Loan Budget, Building Loan Budget, Project Loan Documents and Building Loan Documents such that: (x) the Building Loan Budget is amended to remove the amounts then available under the Building Loan Budget either in the contingency Line Item or as cost savings from other Line Items (the "**Contingency Excess**") and

the Building Loan Amount is reduced by the Contingency Excess; and (y) the contingency line item of the Project Loan Budget and the Project Loan Amount are increased by the Contingency Excess. Borrower and Lender shall execute and deliver such documents, certificates and instruments as may be reasonably required to effect the above described re-allocation, including, without limitation, the filing of an amended Section 22 Affidavit and the modification of the Project Loan Documents and Building Loan Documents to reflect the respective changes in the Project Loan Amount and the Building Loan Amount and Borrower shall obtain such other evidence as Lender may reasonably request to confirm that none of the foregoing shall adversely impact the validity or priority of its security interests in the Property or otherwise adversely impact its rights and remedies under the Loan Documents including, without limitation, appropriate endorsements to the title insurance policy. Borrower shall pay any and all title insurance, recording and other charges and all reasonable costs and expenses (including legal fees) incurred by Lender in connection with the foregoing.

2.1.8 Intentionally Omitted.

2.1.9 Amount of Advances. In no event shall any Advance exceed the full amount of Project Loan Costs theretofore paid or to be paid with the proceeds of such Advance plus any Project Loan Costs incurred by Borrower through the date of the Draw Request for such Advance minus (i) the applicable Retainage for each Contract and Subcontract, and (ii) the aggregate amount of any Advances previously made by Lender. It is further understood that the Retainage described above is intended to provide a contingency fund protecting Lender against failure of Borrower or Guarantor to fulfill any obligations under the Loan Documents, and that Lender may charge amounts to pay for Project Loan Costs against such Retainage in the event Lender is required or elects to expend funds to cure any Default or Event of Default, in either instance, in accordance with the terms of this Agreement. No Advance of the Loan by Lender shall be deemed to be an approval or acceptance by the Lender of any work performed thereon or the materials furnished with respect thereto.

2.1.10 Loan-In-Balance. As used herein, a “**Shortfall**” shall mean, as to any Line Item in the Development Budget as of any date, the amount determined by Lender, in Lender’s sole but reasonable judgment, by which (A) the cost of completing or satisfying such Line Item, exceeds (B) the remaining undisbursed portion of the Loan allocated to such Line Item in the Development Budget plus any sums deposited with Lender pursuant to this **Section 2.1.10** to pay for such Line Item and not previously disbursed plus any Reserve Funds to the extent such Reserve Funds are available hereunder for the payment of such Line Item. From time to time and at any time during the Construction Period, Lender shall have the right, but not the obligation, to notify Borrower that it has determined a Shortfall exists as to any one or more Line Items. If Lender at any time shall so notify Borrower, Borrower shall, at its option within five (5) days of Lender’s notification as aforesaid, either: (i) deposit with Lender an amount equal to such Shortfall, which Lender disburse to Borrower to the satisfaction of the costs of such Line Item prior to advancing any further Loan proceeds on account of such costs; (ii) post an irrevocable standby Letter of Credit in the amount of such Shortfall, in favor of Lender; (iii) to the extent permitted under **Sections 2.1.7** hereof and **5.1.33** of the Building Loan Agreement, and following the satisfaction of the Initial Advance Conditions allocate the Contingency Reserve, with respect to the Line Item(s) in question, to the Shortfall, and provided, further that the amount of the remaining Contingency Reserve for such Line Item(s) (following the

allocation to the Shortfall) is sufficient for such Line Item(s), as determined by Lender in its sole discretion; and (iv) to the extent permitted under Section 5.1.33 of the Building Loan Agreement, and then only following the satisfaction of the Initial Advance Conditions, reallocate cost savings from the Development Budget in respect of the Loan (or other reallocations which are approved by Lender, in its sole discretion) in accordance with the terms of this Agreement, but only to the extent such cost savings can be allocated to the related Line Items. Borrower hereby agrees that Lender shall have a lien on and security interest in, for the benefit of Lender, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid costs as approved by Lender. Lender shall have no obligation to make any further Advances of proceeds of the Loan as to any Line Item until the sums required to be deposited pursuant to clause (i) above as to such Line Item have been exhausted, or until Borrower has posted an irrevocable standby Letter of Credit pursuant to clause (iii) above, as the case may be, and, in any such case, the Loan is back "in balance". Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Lender reasonably determines that the amount thereof is more than the excess, if any, of the remaining Project-Related Costs over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, Lender, in its sole discretion, may apply such amounts either to the remaining Project-Related Costs or to the immediate reduction of outstanding principal and/or interest under the Note.

2.1.11 Quality of Work. No Advance or any portion thereof shall be made with respect to defective work or to any contractor that has performed work that is defective and that has not been cured, as confirmed by the report of the Construction Consultant, but Lender may disburse all or part of any Advance before the sum shall become due if Lender believes it advisable to do so, and all such Advances or parts thereof shall be deemed to have been made pursuant to this Agreement.

2.1.12 Required Equity Funds. All Required Equity Funds shall be contributed (*i.e.*, expended by Borrower and invested by Borrower in the Property, for Project Related Costs set forth on the approved Development Budget) before the Closing Date.

2.1.13 Trust Fund. Pursuant to Section 13 of the New York Lien Law, Borrower shall receive the Advances hereunder and shall hold the right to receive the Advances as a trust fund to be applied first for the purpose of paying the Costs of the Improvements and shall apply the Advances first to the payment of the Cost of the Improvements on the Property before using any part of the total of the same for any other purpose.

2.1.14 Final Project Report and Development Budget. The provisions of Section 2.1.14 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein.

2.1.15 Miscellaneous.

(a) The making of an Advance by Lender shall not constitute Lender's approval or acceptance of the construction theretofore completed. Lender's inspection and approval of the Plans and Specifications, the construction of the Project Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the

sole obligation of Lender as the result of such inspection and approval being to make the Advances if and to the extent, required by this Agreement.

(b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT LENDER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE NEW YORK LIEN LAW PROVIDES THAT "NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE LENDER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER," AND LENDER DOES NOT IMPOSE SUCH AN OBLIGATION ON ITSELF.

Section 2.2 **Interest Rate.**

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below.

2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does

not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 *Monthly Debt Service Payments.* Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from and including the Closing Date up to and including December 31, 2007, which interest shall be calculated in accordance with the provisions of **Section 2.2** hereof, and (b) on each Payment Date commencing on the Payment Date occurring in February, 2008, and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest due for the related Interest Period at the Interest Rate, for such related Interest Period and then to the principal amount of the Loan due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto. Borrower and Lender acknowledge and agree that, on the 15th calendar day of the month preceding each Payment Date during the Construction Term: (a) if and to the extent undrawn funds remain available for Advance under the Project Loan from the Interest Reserve Line Item of the Project Loan Budget, and provided that that no Event of Default or monetary Default then exists under any of the Loan Documents or would occur as a result of such Advance, the Monthly Debt Service Amount then due and owing shall be advanced by Lender by a Advance under Interest Reserve Line Item of the Project Loan Budget; and (b) if no amount remains available under the Interest Reserve Line Item but and to the extent Interest Reserve Funds are on deposit in the Interest Reserve Account, and no Event of Default or monetary Default then exists under any of the Loan Documents, the Monthly Debt Service Payment Amount then due and payable shall be paid by application of funds from the Interest Reserve Account. Borrower and Lender acknowledge and agree that Lender may automatically make an Advance or apply Interest Reserve Funds on deposit in the Interest Reserve Account on each Payment Date occurring during the Construction Term, in either instance, in accordance with this **Section 2.3.1**, without the need for Borrower to submit a Draw Request or otherwise request such an Advance or application.

2.3.2 *Payments Generally.* The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2007. Thereafter each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 *Payment on Maturity Date.* Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 **Prepayments**.

2.4.1 Voluntary Prepayments. Except as otherwise provided in this **Section 2.4.1** and **Section 2.4.2**, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. If for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date three (3) months prior to the Maturity Date (the "**Open Period Date**"), or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part, without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to **Section 6.4** of the Building Loan Agreement, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; *provided, however*, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this **Section 2.4.2**.

2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in

violation of the prohibition against prepayment set forth in **Section 2.4.1** hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a **“Prepayment Date”**) provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. If for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment.

2.4.5 Application of Prepayments to Components. Any prepayment of the principal of the Loan, in whole or in part, voluntary or involuntary, shall be applied (a) first, to the reduction of the outstanding principal balance of the Project Loan until reduced to zero, and (b) second, to the reduction of the outstanding principal balance of the Building Loan until reduced to zero. Subsequent to any Event of Default, any payment of principal from whatever source may be applied by Lender between the various components of the Loan in Lender’s sole discretion.

Section 2.5 **Defeasance.**

2.5.1 Voluntary Defeasance (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntary prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a **“Defeasance Event”**):

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the **“Defeasance Date”**) on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iv) Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with Section 2.5.1(b) below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this **Section 2.5** (the "**Security Agreement**");

(vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of such Defeasance Event;

(vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this **Section 2.5.1(a)** have been satisfied;

(ix) Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in **Section 2.6** hereof, (B) reasonable attorneys' fees and expenses incurred in connection with

the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Open Period Date (the "**Scheduled Defeasance Payments**"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Clearing Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this **Section 2.5** and satisfy Borrower's other obligations under this **Section 2.5** and **Section 2.6** shall be remitted to Borrower.

2.5.2 **Collateral.** Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 **Successor Borrower.** In connection with any Defeasance Event, Borrower shall establish a successor entity (the "**Successor Borrower**"), which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this **Section 2.5.3**, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 **Release of Property**. Except as set forth in this **Section 2.6**, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 **Release of Property**.

(a) If Borrower has elected to defease the Loan and the requirements of **Section 2.5** and this **Section 2.6** have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 **Release on Payment in Full**. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 **Clearing Account/Cash Management**. The provisions of **Section 2.7** of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein

Section 2.8 **Intentionally Omitted**.

Section 2.9 **Payments Not Conditional**. All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.10 **Initial Advance** The obligation of Lender to make the initial Advance of the Project Loan (the "**Initial Advance**") shall be subject to the following conditions precedent (collectively, the "**Initial Advance Conditions**") on or prior to the Required Initial Advance Date, all of which conditions precedent must be satisfied prior to Lender making any such Initial Advance:

2.10.1 **Prior Conditions Satisfied**. All conditions precedent to closing shall continue to be satisfied as of the date of the Initial Advance (in the same manner in which they were satisfied for the closing without reimposing any one-time condition).

2.10.2 **Performance; No Default**. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to

the date of such Initial Advance, and on the date of such Initial Advance there shall exist no Default or Event of Default.

2.10.3 Representations and Warranties. The representations and warranties made by Borrower or Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of the Initial Advance.

2.10.4 No Damage. The Project Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall be satisfied that sufficient insurance proceeds will be available in the reasonable judgment of Lender to effect the satisfactory restoration of the Project Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.10.5 Deliveries. Lender shall have received:

(a) Draw Request. A Draw Request complying with the requirements hereof;

(b) Intentionally Omitted;

(c) Title Insurance Policy. A Title Insurance Policy for the full amount of the Loan, which includes a pending disbursement clause to increase the coverage of the Title Insurance Policy by the amount of the any Advance, insuring the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances;

(d) Lien Waivers. Duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form set forth in Exhibit J to the Building Loan Agreement from the General Contractor and all Contractors and Subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for such work or labor and/or materials for which payment thereof is requested, as to which duly executed lien waivers shall be delivered to Lender with the next request for an Advance;

(e) Ratios. Evidence satisfactory to Lender that following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 80%.

(f) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents;

(g) Anticipated Costs Report. An Anticipated Costs Report; and

(h) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.6 Initial Building Loan Advance. All conditions to the initial advance of the Building Loan set forth in Section 2.10 of the Building Loan Agreement shall have been satisfied.

2.10.7 Rate Lock Agreement. Simultaneously with the Initial Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Initial Advance bears to the Total Loan Amount.

2.10.8 Home Depot Estoppel Certificate. Borrower shall have delivered to Lender estoppel certificates from Home Depot certifying to Lender that the Home Depot Lease is in full force and effect and that there are no defaults by Borrower or Home Depot thereunder, and otherwise in form and substance satisfactory to Lender in Lender's sole discretion (the "**Home Depot Estoppel Certificate**").

2.10.9 Initial Reserve Deposits Borrower shall have deposited the Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit with Lender. The Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit shall be funded on the date of the Initial Advance with a portion of the Initial Advance under the Project Loan.

2.10.10 Retaining Wall Letter. Borrower shall have delivered to Lender a letter from the Village of Pelham Manor evidencing resolution of the retaining wall issue in form and substance satisfactory to Lender in Lender's sole discretion (the "**Retaining Wall Letter**").

2.10.11 Satisfaction of Initial Advance Conditions. Borrower covenants and agrees that, prior to the Required Initial Advance Date, time being of the essence, it shall cause all of the Initial Advance Conditions to be satisfied. Borrower shall not perform any work at the Property, including, without limitation, any demolition of the existing improvements, until all of the Initial Advance Conditions have been satisfied. Borrower's failure to satisfy, or cause the satisfaction of, any of the Initial Advance Conditions on or prior to the Required Initial Advance Date shall, at Lender's election, constitute an Event of Default. In addition to any and all other remedies that may be available to Lender hereunder, under the other Loan Documents, at law or in equity, upon the occurrence of an Event of Default resulting from the failure of any Initial Advance Condition to have been satisfied, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, with full power of substitution to complete or undertake such steps as may be necessary, in Lender's sole determination, to satisfy the Initial Advance Condition in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Initial Advance Conditions, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the Project; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement and the other Loan Documents. In addition, upon such Event of Default, Lender shall have the right to unwind any interest rate hedge

entered into by Lender and apply any deposits or other amounts held by Lender pursuant to the Rate Lock Agreement to costs and expenses incurred by Lender under this Agreement, the Rate Lock Agreement or any of the other Loan Documents.

Section 2.11 **Project Loan Advances**. The obligation of Lender to make the Advances of the Project Loan after the Initial Advance shall be subject to the following conditions precedent, all of which conditions precedent must be satisfied prior to Lender making any such Advance:

2.11.1 **Prior Conditions Satisfied**. All conditions precedent to any prior Advance (in the same manner in which they were satisfied for the Initial Advance or prior Advance, as applicable, and without reimposing any one-time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

2.11.2 **Performance; No Default**. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Advance, and on the date of such Advance there shall exist no Default or Event of Default or Shortfall.

2.11.3 **Representations and Warranties**. The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Advance.

2.11.4 **No Damage**. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall have received insurance proceeds sufficient in the reasonable judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.11.5 **Deliveries**. The following items or documents shall have been delivered to Lender:

(a) **Anticipated Costs Report**. An Anticipated Costs Report in the form set forth in **Exhibit I** to the Building Loan Agreement executed by the General Contractor which sets forth the anticipated costs to complete construction of the Project Improvements, after giving effect to costs incurred during the previous month and any anticipated change orders;

(b) **Endorsement to Title Insurance Policy**. A “datedown” endorsement to Lender’s title insurance policy as described in the form set forth in **Exhibit C** to the Building Loan Agreement which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in

the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender;

(c) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents.

(d) Draw Request. A Draw Request complying with the provisions of this Agreement which shall constitute Borrower's representation and warranty to Lender that: (a) any completed construction is substantially in accordance with the Plans and Specifications, (b) all costs for the payment of which Lender have previously advanced funds have in fact been paid, (c) all the representations and warranties contained in Article IV of this Agreement continue to be true and correct in all material respects, (d) no Event of Default shall have occurred and be continuing hereunder, and (e) Borrower continues to be in compliance in all respects with all of the other terms, covenants and conditions contained in this Agreement.

(e) Affirmation of Payment. General Contractor's Affirmation of Payment (AIA Form G706) in the form attached as Exhibit E to the Building Loan Agreement.

(f) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.11.6 Construction Consultant Certificate. Each draw request relating to Hard Costs shall be accompanied by a certificate or report of the Construction Consultant to Lender based upon a site observation of the Property made by the Construction Consultant not more than thirty (30) days prior to the date of such draw, in which the Construction Consultant shall in substance: (i) verify that the portion of the Project Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications; and (ii) state its estimate of (1) the percentages of the construction of the Project Improvements completed as of the date of such site observation on the basis of work in place as part of the Project Improvements and the Building Loan Budget, (2) the Hard Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (3) the sum necessary to complete construction of the Project Improvements in accordance with the Plans and Specifications, and (4) the amount of time from the date of such inspection that will be required to achieve Completion of the Improvements.

2.11.8 Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

2.11.9 Lien Waivers. Borrower shall have delivered duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as applicable, and otherwise substantially in the form set forth as **Exhibit J** to the Building Loan Agreement, from the General Contractor, all Major Contractors and Major Subcontractors for all work performed, and all labor or material supplied for which payment thereof has been made prior to the date of the Advance.

2.11.10 Construction Consultant Approval. Lender has received advice from the Construction Consultant, satisfactory to Lender, as to Construction Consultant's determination, acting seasonably, based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower's Requisition of the value of the labor and materials in place, that the construction of the Project Improvements is proceeding satisfactorily and according to schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Construction Consultant's satisfaction and substantially in accordance with the Plans and Specifications.

2.11.11 Ratios. Following such Advance (and any Building Loan Advance being made on such date), the Loan-to-Cost Ratio shall be no greater than 80%.

2.11.12 Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

2.11.13 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of each Advance, Borrower has invested Cash equity in an amount equal to or greater than (a) \$8,916,000 or (b) 20% of the Total Project Costs or (c) the difference between the Development Budget and the maximum Loan amount of \$35,664,000 for approved Project-Related Costs (the "**Required Equity Funds**"). Notwithstanding the foregoing, if the Borrower realizes cost savings from the development of the Project, either in the form of Hard Costs or Soft Costs, Advances may be advanced to Borrower provided that (i) the Borrower would not have less than \$8,916,000 of cash equity in the Project through such Advance and (ii) the Debt Service Coverage Ratio shall be equal to or greater than 1.15 to 1.0 assuming a fully advanced Loan using a debt service constant of 7.31%, and (iii) the loan-to-value ratio for the Property is greater than 80% assuming a fully advanced Loan. If Borrower is in non-compliance solely with respect to condition (i) above, at Borrower's option, either (A) any excess cost savings (funds in excess of the amount so that the Required Equity Funds shall continue to be satisfied) shall be deposited as follows: (1) 100% into the Replacement Reserve Account until the amount on deposit in such account equals the Replacement Reserve Cap, and then (2) 100% of any excess into the Rollover Reserve Account until the amount on deposit in such account equals the Rollover Reserve Cap, and then (3) 100% of any excess into any other Reserves required by Lender pursuant to this Agreement, or (B) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement. If Borrower is in compliance with respect to condition (i) above but is not in compliance with conditions (ii) and (iii) above, any excess cost savings shall, at Borrower's option, (A) be held back by Lender as additional collateral for the Loan until satisfaction of each of the requirements are satisfied, or (B) be deposited as follows: (1) 100% into the Replacement Reserve Account until the amount

on deposit in such account equals the Replacement Reserve Cap, and then (2) 100% of any excess into the Rollover Reserve Account until the amount on deposit in such account equals the Rollover Reserve Cap, and then (3) 100% of any excess into any other Reserves required by Lender pursuant to this Agreement, or (C) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement.

2.11.14 Rate Lock Agreement. Simultaneously with each Construction Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Construction Advance bears to the Total Loan Amount, provided, however, that in the event that any of the conditions of **Section 2.11.13** are not satisfied, Lender shall have the right to apply the portion of the deposit under the Rate Lock Agreement to be returned to Borrower to satisfy the conditions of **Section 2.11.13**.

2.11.15 Home Depot Contribution. In the event that Borrower receives any portion of the Tenant Contribution (as defined in the Home Depot Lease) payable to Borrower pursuant to that certain Sublease dated as of December 21, 2006 (the "**Home Depot Lease**"), with Home Depot U.S.A., Inc. ("**Home Depot**") or the proceeds of any letter of credit delivered by Home Depot pursuant to the Home Depot Lease as security for Home Depot's obligation to pay the Tenant Contribution, Borrower shall apply such Tenant Contribution or the proceeds of such letter of credit, as applicable, to the payment of Project Related Costs and shall provide Lender with evidence that such Tenant Contribution or proceeds, as applicable, have been applied to the payment of Project Related Costs prior to Lender making any further Advances under this Agreement.

Section 2.12 **Final Advance**.

2.12.1 Conditions to Release of Final Advance. In addition to the conditions set forth in **Section 2.10** and **Section 2.11**, above, Lender's obligation to make the final Advance in the amount calculated pursuant to **Section 2.12.2** of this Agreement (the "**Final Advance**") shall be subject to receipt by Lender of the following:

(a) Completion of Improvements. Evidence satisfactory to Lender and the Construction Consultant that the Completion of the Improvements has occurred.

(b) Final Building Loan Advance. All conditions to the Final Building Loan Advance have been satisfied and the Final Building Loan Advance shall have been made or will be made simultaneously therewith.

(c) Lien Waivers. Duly executed final lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form as **Exhibit J** to the Building Loan Agreement from the General Contractor and Major Contractors and Major Subcontractors who have performed work for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied.

(d) “As-Built” Plans and Specifications. A full and complete set of “as built” Plans and Specifications certified to by Borrower’s Architect.

(e) Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

(f) Certificates. Completed AIA Form G704 (Certificate of Substantial Completion) and completed AIA Form G707 (Consent of Surety to Final Payments) shall have been executed and delivered by Borrower’s Architect, General Contractor and each surety issuing any of the Required Construction Bonds. .

(g) Deposits to Reserves. All deposits to the Reserve Funds required under the Building Loan Agreement have been made.

(h) Other Documents. Such documents, letters, affidavits, reports and assurances, as Lender, Lender’s counsel and the Construction Consultant may reasonably require.

(i) Required Ratios at Completion. Lender shall have determined that, following the Final Advance (and taking into consideration the Final Building Loan Advance to be made simultaneously under the Building Loan) the Required Ratios at Completion have been satisfied, or Borrower shall have deposited with Lender Cash or a Letter of Credit to satisfy the Required Ratios at Completion in accordance with Section 2.12.2.

(j) Tenant Estoppel Certificates. Borrower shall have delivered to Lender estoppel certificates from all of the tenants at the Property in form and substance satisfactory to Lender.

(k) Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of the Final Advance, Borrower has invested Cash equity in an amount equal to or greater than the Required Equity Funds or has otherwise complied with the provisions of Section 2.11.13 with respect thereto.

(l) Insolvency Opinion. The issuance of and delivery to Lender of six (6) original counterparty Insolvency Opinions in the form attached hereto as Exhibit K to the Building Loan Agreement from Wachtel & Masyr, LLP or another law firm reasonably acceptable to Lender.

2.12.2 Amount of Final Advance. Except as expressly provided for below, the amount of the Final Advance shall be equal to the sum of: (a) any Retainage not previously released and advanced to Borrower; plus (b) the amount of any Punch List and Deferred Maintenance Reserve Deposit not funded pursuant to the Building Loan Agreement; plus (c) the positive difference, if any, between, (i) the Building Loan Amount and (ii) all amounts previously Advanced under the Building Loan (including the amounts described in clauses (a) and (b) of the sentence). The portion of the Final Advance described in clause (c) of the foregoing sentence is referred to herein as the **“Project Loan Earn Out Advance”** and the corresponding portion of the Final Building Loan Advance is referred to herein as the **“Building Loan Earn Out Advance”** and together with the Project Loan Earn Out Advance, the **“Earn**

Out Advances". Notwithstanding anything to the contrary provided for herein, the Earn Out Advances shall be reduced, pro rata, but not below \$0.00, if and to the extent necessary for the Required Ratios at Completion to be achieved following the Final Advances. In addition, if the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00, Lender shall have the right, but not the obligation, to apply any deposits held by Lender pursuant to the Rate Lock Agreement and any Interest Reserve Funds to the payment of the Building Loan and the Project Loan in such order and priority as Lender shall determine in its sole discretion. If the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00 and the deposits, if any under the Rate Lock Agreement and the Interest Reserve Funds are applied to the payment of the Loan, Borrower shall deposit with Lender Cash or a Letter of Credit satisfactory to Lender in an amount equal to the amount which, if used to pay down the Loan, would result in Stabilized Loan-to-Value Ratio of 80% and a Debt Service Coverage Ratio of 1.15 to 1.00, calculated based upon Lender's determination on a pro-forma basis of Lender's Stabilized Net Cash Flow for the 12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 7.31%.

2.12.3 **Rate Lock Agreement.** Upon satisfaction of all of the conditions to the Final Advance set forth in **Section 2.12.1**, and subject to the provisions of **Section 2.12.2**, Lender shall return to Borrower, the remaining deposits, if any, held by Lender under the Rate Lock Agreement and not applied by Lender in accordance with the provisions of the Rate Lock Agreement and any Interest Reserve Funds held by Lender pursuant to the Building Loan Agreement.

Section 2.13 **No Reliance.** All conditions and requirements of this Agreement are for the sole benefit of Lender and no other person or party (including, without limitation, the Construction Consultant, the General Contractor and subcontractors (including, without limitation, Major Contractors and Major Subcontractors) and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower. Lender shall have the right, in its sole and absolute discretion, to waive any such condition or requirement.

Section 2.14 **Method of Disbursement of Loan Proceeds.**

2.14.1 **Draw Request to Be Submitted to Lender.** At such time as Borrower shall desire to obtain an Advance, Borrower shall complete, execute and deliver to Lender a Borrower's Requisition in the form attached as **Exhibit L** to the Building Loan Agreement.

(a) Borrower's Requisition shall be accompanied by a completed and itemized Application and Certificate for Payment (AIA Document No. G702) attached as **Exhibit M** to the Building Loan Agreement or similar form approved by Lender, containing the certification of the General Contractor or contractor or subcontractor to whom such payment is made, as applicable, and Borrower's Architect as to the accuracy of same, together with invoices relating to all items of Hard Costs covered thereby and accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the Improvements to the date of the requisition. The cost breakdown shall also show the percentage of completion of each line item on the Project Loan Budget, and the accuracy of the cost breakdown shall be

certified by Borrower and by Borrower's Architect. All such applications for payment shall also show all contractors and subcontractors, including Major Contractors and Major Subcontractors, by name and trade, the total amount of each contract or subcontract, the amount theretofore paid to each subcontractor as of the date of such application, and the amount to be paid from the proceeds of the Advance to each contractor and subcontractor;

(b) the completed construction will be reviewed by the Construction Consultant who will certify to Lender as to the value of completed construction, percentage of completion and compliance with Plans and Specifications;

(c) lien waivers from each other Major Contractor and Major Subcontractors for work done and materials supplied by them which were paid for pursuant to any prior Draw Request;

(d) a written request of Borrower for any necessary changes in the Plans and Specifications, the Project Loan Budget, the Disbursement Schedule or the Construction Schedule;

(e) copies of all executed change orders, contracts and subcontracts, and, to the extent requested by Lender, of all inspection or test reports and other documents relating to the construction of the Project Improvements not previously delivered to Lender; and

(f) such other information, documentation and certification as Lender shall reasonably request.

2.14.2 *Procedure of Advances.*

(a) Each Draw Request shall be submitted to Lender and Construction Consultant at least ten (10) Business Days prior to the Requested Advance Date, and no more frequently than monthly. Lender shall make the requested Advance on the Requested Advance Date so long as all conditions to such Advance are satisfied or waived.

(b) Not later than 11:00 A.M. New York City time, on the Requested Advance Date, Lender shall make such Advance available to Borrower in accordance with the terms of this **Section 2.14**.

(c) Each Advance (other than the Final Advance) shall be in an amount of not less than \$500,000.00.

(d) Each Advance shall be made on a Payment Date.

2.14.3 *Funds Advanced.* Each Advance shall be made by Lender by wire transfer to such checking account of Borrower as specified to Lender in writing or as provided in **Section 2.14.4** below. All proceeds of all Advances shall be used by Borrower only for the purposes for which such Advances were made. Borrower shall not commingle such funds with other funds of Borrower.

2.14.4 Direct Advances to Third Parties. Lender may make, at Lender's option, any or all Advances directly or through the Title Company to (i) any Contractor, as applicable, for construction expenses which shall theretofore have been approved by Lender and for which Borrower shall have failed to make payment after receipt by Borrower of such applicable Advance, (ii) Borrower's Architect to pay its fees to the extent funds are allocated thereto in the Building Loan Budget if Borrower shall have failed to do so, (iii) the Construction Consultant to pay its fees, (iv) Lender's counsel to pay its fees, (v) to pay (x) any installment of interest due under the Note, (y) any expenses incurred by Lender which are reimbursable by Borrower under the Loan Documents (including, without limiting the generality of the foregoing, reasonable attorneys' fees and expenses and other fees and expenses incurred by Lender), provided that Borrower shall theretofore have received notice from Lender that such expenses have been incurred and Borrower shall have failed to reimburse Lender for said expenses beyond any grace periods provided for said reimbursement under the Note, this Agreement or any of the other Loan Documents, or (z) following the occurrence and continuation of an Event of Default, any other sums due to Lender under the Note, this Agreement or any of the other Loan Documents, all to the extent that the same are not paid by the respective due dates thereof, and (vi) any other Person to whom Lender in good faith determines payment is due and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan directly to any such Person or through the Title Company to such Persons in accordance with this **Section 2.14.4** as amounts become due and payable to them hereunder and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. No further authorization from Borrower shall be necessary to warrant such direct Advances to such relevant Person, and all such Advances shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the Mortgage and the other Loan Documents as fully as if made directly to Borrower.

2.14.5 One Advance Per Month. Lender shall have no obligation to make Advances of the Loan more often than once in each calendar month except that Lender, in its sole discretion, shall have the right but not the obligation, to make additional advances per month for interest, fees and expenses due under the Loan Documents.

2.14.6 Advances Do Not Constitute a Waiver. No Advance shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

2.14.7 Trust Fund Provisions. All proceeds advanced hereunder shall be subject to the trust fund provisions of **Section 13** of the Lien Law. Nothing contained in this Agreement is intended to constitute a promise by Borrower, express or implied, or to create any obligation, express or implied, on the part of Borrower, to make an "improvement," as such term is defined in the Lien Law of the State of New York, and no advance of proceeds of the Loan shall at any time be conditioned, directly or indirectly, upon the making of any such "improvement".

2.14.8 Advances and Disbursements Under Completion Guaranty. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, Borrower hereby irrevocably and unconditionally authorizes Lender to make any disbursements of proceeds of the Loan or of any Reserve Funds held by Lender to Guarantor in accordance with the Guaranty of Completion.

Section 2.15 Interest Advances. Notwithstanding the requirements contained in Section 2.10, Section 2.11 and Section 2.12, and provided that no Event of Default shall have occurred, Lender shall make an Advance on each Payment Date during the Construction Term from the Interest Reserve Line Item, if and to the extent funds remain available under such line item, to pay interest then due under the Note. Notwithstanding the foregoing, if and to the extent that funds are available in the Additional Interest Reserve Deposit, Lender shall first apply funds available in the Additional Interest Reserve Deposit to the payment of interest due, prior to making an Advance for such purpose. Nothing contained in this Section 2.15 shall limit or derogate from Borrower's absolute and unconditional obligation to pay interest due under the Note.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent to Closing. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the conditions precedent set forth in Section 3.1 of the Building Loan Agreement no later than the Closing Date.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. The representations and warranties of Borrower set forth in Section 4.1 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

Section 4.2 Survival of Representations. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V.

BORROWER COVENANTS

Section 5.1 Affirmative Covenants. The affirmative covenants of Borrower set forth in Section 5.1 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

Section 5.2 **Negative Covenants**. The negative covenants of Borrower set forth in Section 5.2 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

ARTICLE VI.

INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1 **Insurance**. Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, insurance policies necessary to satisfy the requirements of Section 6.1 of the Building Loan Agreement.

Section 6.2 **Casualty and Condemnation**. Section 6.2 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

Section 6.3 **Application of Net Proceeds**. Section 6.3 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

ARTICLE VII.

RESERVE FUNDS

Section 7.1 **Reserve Funds**. Borrower shall establish such accounts and make such deposits as are required by Article VII of the Building Loan Agreement. The provisions of Article VII of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein.

Section 7.2 **Other Loan Documents**. Borrower's obligations under this Article VII shall be suspended for so long as sufficient amounts are on deposit and reserved as required by the Building Loan Agreement.

Section 7.3 **Reserve Funds, Generally**. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. All interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless

from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

ARTICLE VIII.

DEFAULTS

Section 8.1 **Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);

(ii) if any of the Taxes (other than Taxes being contested pursuant to **Section 5.1.2** of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;

(iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;

(iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender’s prior written consent in violation of the provisions of this Agreement or the Mortgage;

(v) if any material representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against,

consented to, or acquiesced in by, Borrower, Mezzanine Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mezzanine Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any covenant contained in **Section 4.1.30**;

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Borrower fails to pay the Administration Fee, or any portion or installment thereof, within five (5) days of the date when due;

(xiii) If Borrower fails to deposit with Lender the cash deposit or Letter of Credit required in accordance with **Section 2.12.2** hereof;

(xiv) if Borrower fails to materially comply with the Construction Schedule;

(xv) if the Completion of the Improvements has not occurred on or prior to the Required Completion Date, subject to Force Majeure or if Lender or the Construction Consultant determines that Completion of the Improvements cannot occur on or prior to the Required Completion Date;

(xvi) if any voucher or invoice is fraudulently submitted by Borrower or in connection with any Advance for services performed or for materials used in or furnished for the Property;

(xvii) if there is any cessation at any time in construction of the Project Improvements for more than twenty (20) consecutive Business Days, other than as a result of Force Majeure;

(xviii) if Borrower expressly confesses in writing to Lender its inability to continue or complete construction of the Project Improvements in accordance with this Agreement;

(xix) if Lender, the Construction Consultant or their representatives are not permitted at all reasonable times upon not less than three (3) Business Days notice to enter upon the Property, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans and Specifications, or if Borrower shall fail to furnish to Lender or its authorized representative, when requested upon not less than five (5) Business Days notice, copies of the Plans and Specifications;

(xx) if a material adverse change in Borrower's financial condition shall occur which would, in Lender's reasonable determination, materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any other document evidencing or securing the Loan beyond any applicable notice and grace periods expressly set forth in the Loan Documents;

(xxi) if the conditions precedent to the Final Advance have not been satisfied on or prior to the Required Completion Date;

(xxii) If the Guarantor fails to maintain the Required Liquidity and the Required Net Worth covenants specified in the Guaranty of Completion or if the Guarantor shall default under the Guaranty of Completion or the Guaranty of Recourse Carveouts;

(xxiii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xxiv) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of **Section 9.1** hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of **Section 9.1** hereof, in either case for three (3) Business Days after notice to Borrower from Lender;

(xxv) if an Event of Default (as defined in the Building Loan Agreement) shall have occurred;

(xxvi) if there shall be default by Borrower or Guarantor under any of the other Loan Documents, beyond applicable cure periods, if any, contained in such documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such other default, event or condition is to accelerate the maturity of all or any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xxvii) if (A) a breach or default by Borrower under any condition or obligation contained in the Ground Lease shall occur, (B) there occurs any event or condition that gives the Ground Lessor under the Ground Lease a right to terminate or cancel the Ground Lease, (C) the Ground Lease shall be surrendered or the Ground Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, or (D) any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the prior written consent of Lender;

(xxviii) if (A) a breach or default by Borrower or Storage Facility Tenant under any condition or obligation contained in the Storage Facility Master Lease shall occur, (B) there occurs any event or condition that gives the Borrower or the Storage Facility Tenant under the Storage Facility Master Lease a right to terminate or cancel the Storage Facility Master Lease, (C) the Storage Facility Master Lease shall be surrendered or the Storage Facility Master Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, except as specifically permitted herein, or (D) any of the terms, covenants or conditions of the Storage Facility Master Lease shall in any manner be modified, changed, supplemented, altered, or amended without the prior written consent of Lender;

(xxix) if Guarantor or Storage Facility Tenant shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of Section 5.2.15 or Section 5.1,44(e) hereof, respectively;

(xxx) if the Initial Advance Conditions are not satisfied by the Required Initial Advance Date; or

(xxxi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxx) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender

may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 **Remedies.**

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents

(the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 **Remedies Cumulative; Waivers.** The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE IX.

SPECIAL PROVISIONS

Article 9 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

ARTICLE X.

MISCELLANEOUS

Section 10.1 **Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the

legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 **Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 **Governing Law.**

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN

ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

National Registered Agents, Inc.
875 Avenue of the Americas, Suite 501
New York, New York 10001

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement,

the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

with a copy to: Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.
Facsimile No.: (212) 808-7897

If to Borrower: P/A-Acadia Pelham Manor, LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq., General Counsel
Facsimile No.: (914) 288-2162

If to MERS: MERS Commercial
P.O. Box 2300
Flint, Michigan 48501-2300

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 **Trial by Jury.**

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO

TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 **Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 **Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.12 **Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 **Expenses; Indemnity.** (1) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(a) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that

the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(b) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 **Schedules and Exhibits Incorporated.** The Schedules and Exhibits annexed to the Building Loan Agreement are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 **Offsets, Counterclaims and Defenses.** Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 **No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 **Publicity.** All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan

Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 **Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 **Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 **Identical Obligations; Conflict; Construction of Documents; Reliance.** To the extent that Borrower has identical obligations under this Agreement and under any of the other Loan Agreements, performance by Borrower of such obligations under this Agreement or any of the other Loan Agreements shall be deemed performance by Borrower, as applicable, under all such Loan Agreements and hereunder of such obligations. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this **Section**

10.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 **Prior Agreements**. This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated August 9, 2007 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 **Joint and Several Liability**. If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

Section 10.24 **Certain Additional Rights of Lender (VCOC)**. Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, **Section 5.1.11** hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property and/or construction of the Project Improvements).

The rights described above in this **Section 10.24** may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 **MERS**. Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("**MERS**"), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Mortgage and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to "Mortgagee" shall include

Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

[SIGNATURE PAGE TO PROJECT LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER

P/A-ACADIA PELHAM MANOR, LLC,
a Delaware limited liability company

By: _____,
Name: Robert Masters
Title: Senior Vice President

LENDER

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a
New York corporation

By: _____
Name:
Title: Authorized Signatory

BUILDING LOAN AGREEMENT

Dated as of December 10, 2007

Between

P/A-ACADIA PELHAM MANOR, LLC,
as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
as Lender

MERS MIN: 8000101-000007140-6

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BUILDING LOAN AGREEMENT

THIS BUILDING LOAN AGREEMENT, dated as of December 10, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**” or sometimes, this “**Building Loan Agreement**”), is made by and between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (“**Lender**”) and **P/A-ACADIA PELHAM MANOR, LLC**, a Delaware limited liability company, having its principal place of business at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue — Suite 260, White Plains, New York 10605, as Borrower (“**Borrower**”).

WITNESSETH :

WHEREAS, Borrower desires to obtain the Building Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Building Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I.

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**ADA**” shall mean the Americans with Disabilities Act of 1992, as amended from time to time.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c).

“**Additional Interest Reserve Deposit**” shall have the meaning set forth in Section 5.1.28 hereof.

“**Additional Mezzanine Borrower**” shall have the meaning set forth in Section 5.2.14(g) hereof.

“**Additional Mezzanine Loan**” shall have the meaning set forth in **Section 5.2.14** hereof.

“**Additional Mezzanine Loan Documents**” shall have the meaning set forth in **Section 5.2.14(f)** hereof.

“**Administration Fee**” shall have the meaning set forth in the Administration Fee Agreement.

“**Administration Fee Agreement**” shall mean that certain Administration Fee Agreement dated as of the date hereof between Borrower and Lender.

“**Advance**” or “**Advances**” shall mean any disbursement of the proceeds of the Building Loan by Lender pursuant to the terms of this Agreement.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Affiliated Manager**” shall mean any Manager in which Borrower or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

“**Affiliate Fees**” shall mean collectively, any development fee, management fee, brokerage fee, commission, distribution, reimbursement, salary, consideration sum or amount, however characterized, payable to any Restricted Party with respect to the Property and/or the Project.

“**Affirmation of Payment**” shall have the meaning as set forth in **Section 2.11.5(e)**.

“**Aggregate Debt Service Coverage Ratio**” shall have the meaning set forth in **Section 5.2.14** hereof.

“**Agreement**” shall mean this Building Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Anchor Tenant**” shall mean Home Depot, Inc. or any other tenant occupying 20,000 square feet or more of space at the Property.

“**Annual Budget**” shall mean the operating budget, including all planned Capital Expenditures, for the Property prepared by Borrower in accordance with **Section 5.1.11(e)** hereof for the applicable Fiscal Year or other period.

“**Anticipated Costs Report**” shall have the meaning as set forth in **Section 2.11.5(a)**.

“**Approved Annual Budget**” shall have the meaning set forth in **Section 5.1.11(e)** hereof.

“**Approved Bank**” shall mean a bank or other financial institution which has a minimum long term unsecured debt rating of at least “**AA**” by S&P and Fitch and “**Aa2**” by Moody’s.

“**Architect’s Certificate**” shall have the meaning as set forth in **Section 2.10.10**.

“**Architect’s Contract**” shall mean those certain executed proposals from Borrower’s Architect to General Contractor dated September 1, 2005 (revised September 21, 2005) and November 3, 2005, and accepted by Borrower, as the same may be amended from time to time in compliance with the terms hereof.

“**Assignment of Contracts**” shall mean that certain Assignment of Contracts, Licenses and Permits dated as of the date hereof from Borrower, as assignor, to Lender, as assignee.

“**Assignment of Leases**” shall mean, collectively, the Building Loan Assignment of Leases and the Project Loan Assignment of Leases.

“**Assignment of Management Agreement**” shall mean, with respect to each Manager, that certain Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof, among Lender, Borrower and the applicable Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

“**Bankruptcy Action**” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which such Person colludes with, or otherwise assists such Person, or causes to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“**Bankruptcy Code**” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“**Borrower’s Architect**” shall mean Greenberg Farrow Architects.

“**Borrower’s Requisition**” shall have the meaning set forth in Section 2.14.1 hereof.

“**BSCMI**” shall mean Bear Stearns Commercial Mortgage, Inc., a New York corporation, and its successors in interest.

“**Budget Line**” shall have the meaning set forth in Section 2.1.14 hereof.

“**Building Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement in the principal amount of up to the Building Loan Amount.

“**Building Loan Amount**” shall mean Twenty-Three Million Twenty-Six Thousand Nine Hundred Six and 60/100 Dollars (\$23,026,906.60).

“**Building Loan Assignment of Leases**” shall mean that certain Building Loan Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to Lender, as assignee.

“**Building Loan Budget**” shall have the meaning set forth in Section 2.1.14 hereof.

“**Building Loan Costs**” shall mean all Project-Related Costs (including Hard Costs and Soft Costs) that are Costs of the Improvements.

“**Building Loan Documents**” shall mean, collectively, this Agreement, the Building Loan Note, the Building Loan Mortgage, the Building Loan Assignment of Leases, as well as all other documents now or hereafter executed and/or delivered with respect to the Building Loan.

“**Building Loan Earn Out Advance**” shall have the meaning set forth in Section 2.12.2 hereof.

“**Building Loan Mortgage**” shall mean that certain Building Loan Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated the date hereof, executed and delivered by Borrower to Lender as security for the Building Loan and encumbering the Property.

“**Building Loan Note**” shall mean that certain Building Loan Promissory Note, dated the date hereof, in the principal amount of up to the Building Loan Amount made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, or the place of business of any Servicer are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs).

“**Carrying Costs**” shall mean, the sum of the following costs associated with the Property for any specified period: (a) Taxes, (b) Other Charges, (c) Insurance Premiums and (d) Operating Expenses.

“**Cash**” shall mean the legal tender of the United States of America.

“**Cash and Cash Equivalents**” shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Obligations, and (iii) an irrevocable standby Letter of Credit.

“**Cash Management Account**” shall have the meaning set forth in **Section 2.7.2(a)** hereof.

“**Cash Management Agreement**” shall mean that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Manager, Cash Management Bank and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Cash Management Bank**” shall mean Wells Fargo Bank, N.A., a national banking association, or any successor Eligible Institution acting as Agent under the Cash Management Agreement.

“**Cash Management Conditions**” shall have the meaning set forth in **Section 2.7** hereof.

“**Cash Trap Event**” shall mean the occurrence of any of the following: (a) an Event of Default; (b) any Bankruptcy Action of Borrower or Mezzanine Borrower; (c) any Bankruptcy Action of Manager; (d) on or after the last day of the Construction Term, a DSCR Trigger, or (e) on or after the earlier of that date that an Anchor Tenant opens for business or the last day of the Construction Term, a Go Dark Trigger .

“**Cash Trap Event Cure**” shall mean:

(a) if the Cash Trap Event is caused solely by the occurrence of:

(i) clause (a) in the definition of “Cash Trap Event”, a cure of the Event of Default which gave rise to the Cash Trap Event which is accepted or waived in writing by Lender, in its sole discretion, prior to Lender exercising any of its rights, to accelerate the Loan, move to appoint a receiver, or commence a foreclosure action;

(ii) clause (c) in the definition of “Cash Trap Event”, either (A) if such Cash Trap Event is as a result of the filing of an involuntary petition against Manager and not consented to by Manager, upon the same being discharged, stayed or dismissed within thirty (30) days of such filing and such filing (after dismissal or discharge), provided, that such dismissal or discharge in Lender’s reasonable opinion does not adversely impact the Loan or the Property, or (B) if Borrower replaces the Manager with a Qualified Manager pursuant to a Replacement Management Agreement approved by Lender;

(iii) a DSCR Trigger Event, if the Debt Service Coverage Ratio is greater than 1.05 to 1:00 based upon the trailing six (6) month period annualized as of two (2) consecutive Debt Service Coverage Ratio Determination Dates occurring thereafter;

(iv) a Go Dark Trigger, if the relevant Anchor Tenant subsequently is in occupancy, open for business for one hundred twenty (120) days, and paying full contractual rent with no free rent, credit or right of offset during the term of its Lease, as evidenced by an estoppel letter from such Anchor Tenant in form acceptable to Lender.

(b) provided, that, each such Cash Trap Event Cure set forth in this definition shall be subject to the following conditions, (i) no Event of Default (other than that giving rise to the Cash Trap Event) shall have occurred and be continuing under this Agreement or any of the other Loan Documents, (ii) Borrower shall have notified Lender in writing of its election to cure the respective Cash Trap Event, (iii) a Cash Trap Event Cure under clauses (a)(i) and (a)(ii) may occur no more than 3 times during the term of the Loan, (iv) Borrower shall have paid all of Lender’s reasonable expenses incurred in connection with such cure including, reasonable attorney’s fees and costs; and (v) in no event shall Borrower have the right to “cure” a Cash Trap Event occurring by reason of a Bankruptcy Action of Borrower or Mezzanine Borrower.

“**Cash Trap Period**” shall mean each period commencing on the occurrence of a Cash Trap Event and continuing until the earlier of (a) the Payment Date next occurring following the related Cash Trap Event Cure, or (b) until payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents in accordance with the terms and provisions of the Loan Documents.

“**Casualty**” shall have the meaning set forth in Section 6.2 hereof.

“**Casualty Consultant**” shall have the meaning set forth in Section 6.2.4(d) hereof.

“**Casualty Retainage**” shall have the meaning set forth in Section 6.2.4(e) hereof.

“**Clearing Account**” shall have the meaning set forth in Section 2.7 hereof.

“**Clearing Account Agreement**” shall have the meaning set forth in Section 2.7.1 hereof.

“**Clearing Bank**” shall have the meaning set forth in Section 2.7 hereof.

“**Closing Date**” shall mean the date of this Agreement.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Completion of the Improvements**” shall mean the substantial completion (i.e., completion of the Project Improvements other than Punch List Items) of the construction and renovation of the Project Improvements substantially in accordance with all Plans and Specifications, all Legal Requirements, all Permitted Encumbrances and this Agreement, and that all utilities necessary to service the Project Improvements have been connected and are in operation, such completion to be evidenced to the reasonable satisfaction of Lender and the Construction Consultant; together with the delivery to Lender of:

(i) a permanent or temporary certificate(s) of occupancy for the Project Improvements and evidence that all other Governmental Approvals have been issued and all other Legal Requirements have been satisfied so as to allow the Project Improvements to be used and operated in accordance with the Loan Documents and the Plans and Specifications; and

(ii) AIA Form G704 (Certificate of Substantial Completion) completed and executed by Borrower’s Architect certifying the substantial completion of the Project Improvements in accordance with the Plans and Specifications.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

“**Condemnation Proceeds**” shall have the meaning set forth in Section 6.2.1 hereof.

“**Construction Advance Conditions**” shall have the meaning set forth in Section 2.11 hereof.

“**Construction Consultant**” shall mean Valcon Construction Consultants, Inc., or such other Person as Lender may designate and engage as a replacement to inspect the Project Improvements and the Property as construction progresses and consult with and to provide advice to and to render reports to Lender, which Person may be, at Lender’s option upon notice to Borrower, either an officer or employee of Lender or consulting architects, engineers or inspectors appointed by Lender.

“**Construction Schedule**” shall mean the construction schedule attached hereto as Schedule IV, broken down by trade, of Borrower’s best good faith estimate of the dates of commencement and completion of the Project Improvements certified by Borrower to Lender in final form approved by Lender and the Construction Consultant prior to the Closing.

“**Construction Term**” shall mean the period commencing on the date hereof and ending on the first to occur of (i) the Maturity Date, whether by acceleration or otherwise, (ii) the 24th Payment Date, and (iii) the Final Advance.

“**Contingency**” shall mean the contingency Line Item in the Building Loan Budget and/or Project Loan Budget.

“**Contract**” shall mean shall mean any agreement (including the General Contractor’s Agreement) entered into by Borrower or by General Contractor, in which the Contractor or Subcontractor thereunder agrees to provide services, labor and/or materials in connection with the Project Improvements. All Contracts shall require that the Contractor or Subcontractor thereunder use union labor.

“**Contractor**” shall mean any contractor hired by Borrower, including, without limitation, the General Contractor (including subsidiaries and affiliates), supplying services, labor and/or materials in connection with the Project.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “Controlled” and “Controlling” shall have correlative meanings.

“**Costs of the Improvement**” shall mean those items defined as an “improvement” and/or a “cost of improvement” under Section 2 of Article 1 the Lien Law.

“**Covered Disclosure Information**” shall have the meaning set forth in **Section 9.2(b)** hereof.

“**Debt**” shall mean the outstanding principal amount of the Building Loan set forth in, and evidenced by, this Agreement, the Building Loan Documents and the Building Loan Note, together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Building Loan under the Building Loan Note, this Agreement, the Building Loan Mortgage or any other Building Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, the aggregate scheduled principal and interest payments due under this Building Loan Agreement and the Building Loan Note.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, adjusted for a vacancy rate equal to the greater of the actual vacancy rate, the market vacancy rate and an assumed vacancy rate equal to five percent (5%), without deduction for (i) actual management fees incurred in connection with the operation of the Property less (A) management fees equal to the greater of (1) assumed management fees of four percent (4%) of Gross Income from Operations or (2) the actual management fees incurred, (B) Replacement Reserve Fund contributions equal to \$47,544 per annum; and

(C) Rollover Reserve Fund contributions equal to \$187,744 per annum, and

(b) the denominator is the Total Debt Service for such period assuming a thirty (30) year amortization schedule.

“Debt Service Coverage Ratio Determination Date” shall mean the earlier of the Required Completion Date and the date of the Final Advance and the first day of each calendar month thereafter.

“Default” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“Default Rate” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the maximum rate permitted by applicable law or (b) five percent (5%) above the Interest Rate.

“Defeasance Date” shall have the meaning set forth in **Section 2.5.1(a)(i)** hereof.

“Defeasance Deposit” shall mean an amount equal to the remaining principal amount of the Note, the Defeasance Payment Amount, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of **Section 2.5** hereof (including, without limitation, any fees and expenses of accountants, attorneys and the Rating Agencies incurred in connection therewith).

“Defeasance Event” shall have the meaning set forth in **Section 2.5.1(a)** hereof.

“Defeasance Expiration Date” shall mean the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust.

“Defeasance Payment Amount” shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

“Deferred Maintenance Condition” shall have the meaning set forth in **Section 7.4.1**.

“Development Budget” shall have the meaning set forth in **Section 2.1.14** hereof.

“Disbursement Schedule” shall mean the schedule of the amounts of Advances hereunder and Project Loan Advances under the Project Loan anticipated to be requisitioned by Borrower each month during the term of the Loan, attached hereto as part of the Development Budget and in final form approved by Lender and the Construction Consultant prior to the Closing Date.

“Disclosure Document” shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, or such other information reasonably requested by Lender, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

“Dollars” or **“\$”** shall mean lawful money of the United States of America.

“Draw Request” shall mean, with respect to each Advance, Borrower’s Requisition for such Advance, along with such other documents required by this Agreement to be furnished to Lender as a condition to such Advance.

“DSCR Trigger Event” shall mean, that as of any Debt Service Coverage Ratio Determination Date, the Debt Service Coverage Ratio as determined by Lender based on the trailing six (6) month period (annualized) immediately preceding the date of such determination is less than 1.00 to 1.00.

“Earn Out Advance” shall have the meaning set forth in **Section 2.12.2** hereof.

“Eligible Account” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least Fifty Million and 00/100 Dollars (\$50,000,000.00) and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“Eligible Institution” shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P, “P-1” by Moody’s and “F-1+” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s).

“Embargoed Person” shall have the meaning set forth in **Section 5.1.42** hereof.

“Environmental Engineer” shall mean such environmental engineering or similar inspection firms approved by Lender.

“Environmental Indemnity” shall mean that certain Environmental Indemnification Agreement, dated as of the date hereof, executed by Borrower and Guarantor in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Equipment” shall have the meaning as set forth in the granting clause of the Building Loan Mortgage.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

“**Event of Default**” shall have the meaning set forth in **Section 8.1(a)** hereof.

“**Excess Cash Flow**” shall have the meaning set forth in Section 3.4(i) of the Cash Management Agreement.

“**Excess Cash Flow Funds**” shall have the meaning set forth in **Section 7.6** hereof.

“**Excess Cash Flow Reserve**” shall have the meaning set forth in **Section 7.6** hereof.

“**Exchange Act**” shall have the meaning set forth in **Section 9.2(a)** hereof.

“**Extraordinary Expense**” shall have the meaning set forth in **Section 5.1.11(f)** hereof.

“**Final Advance**” shall have the meaning set forth in **Section 2.12.1**.

“**Final Project Loan Advance**” shall mean the Final Advance as defined in the Project Loan Agreement.

“**Final Project Report**” shall mean the report to be prepared by the Construction Consultant of its review of the Development Budget, Building Loan Budget, Project Loan Budget, the Plans and Specifications, the Construction Schedule in final form, the Disbursement Schedule, all in final form, the General Contractor’s Agreement, the Contracts, the Major Contracts and such other documents and information reasonably required by the Construction Consultant.

“**FIRREA**” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**Fixtures**” shall have the meaning set forth in the Mortgage.

“**Force Majeure**” shall mean, with respect to the obligations of any Person, actual delay beyond the reasonable control of such Person, which is due to any of the following (a) natural disaster, fire or other casualty, earthquake, flood, explosion, abnormally inclement weather for the season in question (as reported by an appropriate authority) or any other act of God, (b) declared or undeclared war, acts of domestic or international terrorism, riot, mob violence, insurrection or sabotage, (c) the inability to procure labor, equipment, facilities, energy,

materials or supplies, the failure of transportation, any other labor disturbance, strikes, lockouts or actions of labor unions, in each such case, so long as such cause is not within the reasonable control of such Person, (d) condemnation, temporary restraining orders or injunctions, changes after the date hereof in the requirements or interpretations of relevant laws, in each such case, so long as such cause is not within the reasonable control of such Person, or (e) any other cause not within the reasonable control of such Person; provided that, with respect to any of the circumstances described in the foregoing clauses (a) through (e) inclusive: (i) for the purposes of this Agreement, any period of Force Majeure shall apply only to such person's performance of the obligations necessarily affected by such circumstance and shall continue only so long as such person is continuously and diligently using all reasonable efforts to minimize the effect and duration thereof; and (ii) notwithstanding the foregoing, Force Majeure shall not include (A) the unavailability or insufficiency of funds as a result of the insolvency of such Person or any of its Affiliates, (B) any breach of contract or default by Borrower's Architect, the General Contractor or any Major Contractor under their respective contracts and agreements concerning the Project Improvements.

"GAAP" shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

"General Contractor" shall mean ACRS, Inc. or any other general contractor or construction manager, as applicable, approved by Lender and the Construction Consultant in accordance with the terms of this Agreement.

"General Contractor's Agreement" shall have the meaning set forth in Section 2.10.9.

"General Contractor's Certificate" shall have the meaning set forth in Section 2.10.10.

"Go Dark Trigger" shall mean that an Anchor Tenant Goes Dark.

"Goes Dark" shall mean with respect to any tenant, that the relevant tenant ceases to continuously occupy and operate its business at its premises on the Property in a manner similar to which it operates its business as of the date that such tenant opens for business at the Property.

"Governmental Approvals" shall mean all approvals, consents, waivers, orders, acknowledgments, authorizations, permits and licenses required under applicable Legal Requirements to be obtained from any Governmental Authority for the performance of the demolition work and construction of the Project Improvements and/or the use, occupancy and operation of the Project Improvements before the commencement, during and following completion of construction and Building Loan, as the context requires, including, without limitation, all land use, building, subdivision, zoning and similar ordinances and regulations promulgated by any Governmental Authority.

"Governmental Authority" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“Gross Income from Operations” shall mean, for any period, all sustainable income, computed in accordance with GAAP, derived from the ownership and operation of the Property from whatever source during such period, *including*, but not limited to, Rents under the Storage Facility Master Lease and Rents from tenants in occupancy, open for business and paying full contractual rent without right of offset or credit, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, business interruption or other loss of income or rental insurance proceeds or other required pass-throughs and interest on Reserves, if any, but *excluding* Rents from month-to-month tenants, or tenants that are included in any Bankruptcy Action, sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, Insurance Proceeds (other than business interruption or other loss of income or rental insurance), Awards, unforfeited security deposits, utility and other similar deposits and any disbursements to Borrower from the Reserve Funds, if any.

“Ground Lease” shall mean that certain Ground Lease dated as of October 1, 2004 between Ground Lessor as lessor and Borrower, as lessee, as the same has been amended and may hereafter be amended, restated, replaced, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Ground Lease Reserve Account” shall have the meaning set forth in [Section 7.9.1](#) hereof.

“Ground Lease Reserve Fund” shall have the meaning set forth in [Section 7.9.1](#) hereof.

“Ground Lessor” shall mean Rusciano & Son Corp. and Secor Lane Corp., and any successor lessor under the Ground Lease.

“Ground Rent” shall have the meaning set forth in [Section 7.9.1](#) hereof.

“Guarantor” shall mean Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company.

“Guaranty of Completion” shall mean that certain Guaranty of Completion, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Guaranty of Recourse Carveouts” shall mean that certain Guaranty of Recourse Carveouts, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Hard Costs” shall mean those Building Loan Costs which are for labor, materials, equipment and fixtures.

“Home Depot” shall have the meaning set forth in [Section 2.11.15](#) hereof.

“**Home Depot Estoppel Certificate**” shall have the meaning set forth in Section 2.10.19 hereof.

“**Home Depot Lease**” shall have the meaning set forth in Section 2.11.15 hereof.

“**Improvements**” shall have the meaning set forth in the granting clause of the Mortgage

“**Indebtedness**” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

“**Indemnified Liabilities**” shall have the meaning set forth in Section 10.13(a) hereof.

“**Indemnified Persons**” shall have the meaning set forth in Section 9.2(b) hereof.

“**Indemnifying Person**” shall mean Borrower and Guarantor.

“**Independent Director**” shall mean a director of a corporation or a limited liability company that is a Special Purpose Entity and “**Independent Manager**” shall mean a manager of a limited liability company that is a Special Purpose Entity, in either case, who is not at the time of initial appointment, or at any time while serving as an Independent Director or Independent Manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director or Independent Manager of a Special Purpose Entity), officer, employee, partner, member, attorney or counsel of Guarantor, Borrower, or any Affiliate of any of them (unless such natural person is an Independent Director or Independent Manager provided by a nationally recognized company that provides professional independent managers and which also provides other corporate services in the ordinary course of business, in which case such Person may receive reasonable fees for servicing as Independent Director or Independent Manager of a Special Purpose Entity); (b) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with Guarantor, Borrower or any Affiliate of any of them; (c) a Person controlling or under common control with any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Initial Advance**” shall have the meaning set forth in **Section 2.10** hereof.

“**Initial Advance Conditions**” shall have the meaning set forth in **Section 2.10** hereof.

“**Initial Interest Reserve Deposit**” shall have the meaning set forth in **Section 7.2.1**.

“**Initial Tax and Insurance Escrow Deposit**” shall have the meaning set forth in **Section 7.1** hereof.

“**Insolvency Opinion**” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Wachtel & Masyr, LLP in connection with the Loan.

“**Insurance Premiums**” shall have the meaning set forth in **Section 6.1.1(e)** hereof.

“**Insurance Proceeds**” shall have the meaning set forth in **Section 6.2.1**.

“**Intellectual Property**” shall have the meaning set forth in **Section 4.1.44** hereof.

“**Interest Period**” shall mean: (a) the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs, both dates inclusive; and (b) the period commencing on and including the first day of each calendar month thereafter during the term of Loan and ending and including the last day of such calendar month.

“**Interest Rate**” shall mean seven and one hundred eighty-two one thousandths percent (7.182%), provided, however, in the event that (a) on or before June 1, 2009, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.00, and Borrower delivers to Lender a MAI appraisal performed, at Borrower’s sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender’s internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan, Lender shall, upon Borrower’s written request, reduce the Interest Rate to a per annum rate equal to five and ninety-three one hundredth percent (5.93%), commencing on the first Payment Date after Borrower’s request, and (b) on or before June 1, 2010, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.00, and Borrower delivers to Lender a MAI appraisal performed, at Borrower’s sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender’s internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan, Lender shall, upon Borrower’s written request, reduce the Interest Rate to a per annum rate equal to five and ninety-eight one hundredth percent (5.98%), commencing on the first Payment Date after Borrower’s request. Any reduction in the Interest Rate as set forth above shall be effective

commencing on the first Payment Date after Borrower's request for such reduction and satisfaction of the conditions set forth above and no reduction in the Interest Rate shall be retroactive. In the event that Borrower fails to satisfy the conditions for a reduction of the Interest Rate within the time periods set forth above, time being of the essence, Borrower shall have no further right to obtain a reduction in the Interest Rate. **Notwithstanding anything to the contrary contained herein, Lender shall have the right, in its sole discretion, at any time prior to a Securitization of the Loan, to increase the Interest Rate by up to two-tenths of one percent (0.20%).**

"Interest Reserve Account" shall have the meaning set forth in **Section 7.2.1.**

"Interest Reserve Deposit" shall have the meaning set forth in **Section 7.2.1.**

"Interest Reserve Fund" shall have the meaning set forth in **Section 7.2.1.**

"Interest Reserve Line Item" shall mean the interest reserve Line Item of the Project Loan Budget.

"Land" shall mean the land described on **Exhibit "A"** attached hereto.

"Lease" shall mean any lease, sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Legal Requirements" shall mean, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

"Lender" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

"Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit, as the same may be replaced, split, substituted, modified, amended, supplemented, assigned or otherwise restated from time to time, (either an evergreen letter of credit or a letter of credit which does not expire until at least two (2) Business Days after the Maturity Date or such earlier date as such Letter of Credit is no longer required pursuant to the

terms of this Agreement) in favor of Lender and entitling Lender to draw thereon based solely on a statement purportedly executed by an officer of Lender stating that it has the right to draw thereon, and issued by a domestic Approved Bank or the U.S. agency or branch of a foreign Approved Bank, or if there are no domestic Approved Banks or U.S. agencies or branches of a foreign Approved Bank then issuing letters of credit, then such letter of credit may be issued by a domestic bank, the long term unsecured debt rating of which is the highest such rating then given by the Rating Agency or Rating Agencies, as applicable, to a domestic commercial bank.

“**Liabilities**” shall have the meaning set forth in **Section 9.2(b)** hereof.

“**Lien**” shall mean, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“**Lien Law**” shall mean the Lien Law of the State of New York.

“**Line Item**” shall have the meaning set forth in **Section 2.1.14** hereof.

“**Liquidity**” means unrestricted and unencumbered Cash and Cash Equivalents acceptable to Lender.

“**Loan**” shall mean collectively, the Building Loan and the Project Loan.

“**Loan Agreement**” shall mean collectively, this Building Loan Agreement, and the Project Loan Agreement.

“**Loan Documents**” shall mean collectively, the Building Loan Documents and the Project Loan Documents, the Environmental Indemnity, the Guaranty of Completion, the Guaranty of Recourse Carveouts, the Cash Management Agreement, the Clearing Account Agreement, the Assignment of Contracts, the Administration Fee Agreement, the Rate Lock Agreement, and all other documents executed and/or delivered in connection with the Loan.

“**Loan-to-Cost Ratio**” shall mean, as of any date, the ratio of (i) the Total Loan Amount to (ii) the aggregate amount of Project-Related Costs (excluding any Affiliate Fees) actually paid as of such date plus Project-Related Costs to be paid with the proceeds of the Advance(s) being requested by Borrower on such date hereunder and under the Project Loan Agreement.

“**Major Contractor**” shall mean any contractor hired by Borrower, including, without limitation, the General Contractor (including subsidiaries and affiliates), supplying services, labor and/or materials in connection with the Project which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders, or which relates to major project elements such as steel, concrete, HVAC systems, windows, doors and other similar items.

“**Major Contracts**” shall mean any Contract with a Major Contractor or Major Subcontractor.

“**Major Subcontractor**” shall mean any subcontractor supplying services, labor and/or materials in connection with the Project which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders, or which relates major project elements such as steel, concrete, HVAC systems, windows, doors and other similar items.

“**Management Agreement**” shall mean, collectively, the Management Agreement dated as of August 23, 2007 by and between Borrower and Acadia—P/A Management Services, LLC and the Management Agreement dated as of December 4, 2007 by and between Borrower and Post Management, L.L.C. pursuant to which Manager is to provide management and other services with respect to the Property, or, if the context requires, the Replacement Management Agreement.

“**Manager**” shall mean Acadia—P/A Management Services, LLC, a Delaware limited liability company, and Post Management, L.L.C., a Delaware limited liability company, or, if the context requires, a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

“**Material Action**” means, with respect to any Person, to file any insolvency or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against such Person, to file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to make any assignment for the benefit of creditors of such Person, to admit in writing such Person’s inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

“**Maturity Date**” shall mean January 1, 2020 or such earlier date on which the final payment of principal of the Building Loan Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**MERS**” shall have the meaning set forth in Section 10.25 hereof.

“**Mezzanine Borrower**” shall have the meaning set forth in Section 9.1.

“**Mezzanine Loan Documents**” shall have the meaning set forth in **Section 9.1**.

“**Monthly Debt Service Payment Amount**” shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with **Section 2.2** hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in January, 2013, and (b) a constant monthly payment of \$[_____] **156,023.44** commencing with the Payment Date occurring in February, 2013 and on each Payment Date thereafter, provided, however, that in the event that the Interest Rate is modified in accordance with the provisions of the definition of “Interest Rate,” the Monthly Debt Service Payment Amount shall be adjusted by Lender based upon the modified Interest Rate and a thirty (30) year amortization schedule, Lender’s determination of the Monthly Debt Service Payment Amount being binding absent manifest error.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Mortgage**” shall mean, collectively, the Building Loan Mortgage and the Project Loan Mortgage, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Net Cash Flow**” shall mean, for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“**Net Operating Income**” shall mean the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

“**Net Proceeds**” shall have the meaning set forth in **Section 6.2.1** hereof.

“**Net Proceeds Deficiency**” shall have the meaning set forth in **Section 6.2.4(g)** hereof.

“**Net Worth**” means with respect to any Person for any period, assets less liabilities of such Person, determined in accordance with GAAP.

“**Note**” shall mean, collectively, the Building Loan Note and the Project Loan Note.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower that is signed by an authorized officer of the general partner or managing member of Borrower.

“**Open Period Date**” shall have the meaning set forth in **Section 2.4.1** hereof.

“**Operating Expenses**” shall mean the total of all expenditures, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees, property taxes and assessments, advertising expenses, management fees, payroll and related

taxes, computer processing charges, operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation, Debt Service, Capital Expenditures and contributions to the Reserve Funds.

“Operating Reserve Account” shall have the meaning set forth in **Section 7.7.1** hereof.

“Operating Reserve Deposit” shall have the meaning set forth in **Section 7.7.1** hereof.

“Operating Reserve Funds” shall have the meaning set forth in **Section 7.7.1** hereof.

“Other Charges” shall mean all maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“Other Debt” shall mean the **“Debt”** as defined in both the Project Loan Agreement, and the Mezzanine Loan Documents, if applicable.

“Other Design Professionals” shall mean all architects (other than Borrower’s Architect) and engineers engaged by Borrower and/or Borrower’s agent to work on the Project Improvements.

“Other Obligations” shall have the meaning as set forth in the Mortgage.

“Payment Date” shall mean February 1, 2008, and the 1st day of every month thereafter during the term of the Loan until and including the Maturity Date or, if such day is not a Business Day, the immediately preceding Business Day.

“Performance Letter” shall have the meaning set forth in **Section 2.10.11(a)** hereof.

“Permitted Encumbrances” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, unless and to the extent being contested by Borrower in compliance with the terms of this Agreement, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to complete the Project or repay the Loan.

“Permitted Investments” shall have the meaning set forth in the Cash Management Agreement.

“**Permitted Mezzanine Lender**” shall have the meaning set forth in **Section 5.2.14** hereof.

“**Permitted Release Date**” shall mean the earlier of (i) the Defeasance Expiration Date or (ii) the date that is the fourth (4th) anniversary of the Completion of the Improvements.

“**Permitted Transfer**” means any of the following:

(a) any transfer, directly as a result of the death of a natural Person, of stock, membership interests, partnership interests or other ownership interests in any Restricted Party previously held by the decedent in question to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer;

(b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the such natural Person to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer,

(c) transfers for estate planning purposes of a natural Person’s stock, membership interests, partnership interests or other ownership interests in a Restricted Party by the current partner(s), shareholder(s) or member(s), as applicable, to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as such Restricted Party is reconstituted, if required, following such transfer and there is no change in Control of such Restricted Party as a result of such transfer;

(d) transfers permitted pursuant to Section 5.2.11(d) of this Agreement;

(e) the sale, transfer, or issuance of stock in Acadia Realty Trust, in the ordinary course of business, provided such stock is listed on the NYSE or other nationally recognized stock exchange; and

(f) a Transfer by P/A Associates, LLC of 100% of its membership interest in Acadia—P/A Holding Company, LLC to Acadia Strategic Opportunity Fund II, LLC (“**Fund II**”) or an Affiliate of Fund II Controlled by Acadia Realty Trust.

“**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Personal Property” shall have the meaning set forth in the granting clause of the Mortgage.

“Physical Conditions Report” shall mean, a structural engineering report prepared by a company satisfactory to Lender regarding the physical condition of the Property, satisfactory in form and substance to Lender in its sole discretion, which report shall, among other things, confirm that the Property and its use complies, in all material respects, with all applicable Legal Requirements (including, without limitation, zoning, subdivision and building laws).

“Plans and Specifications” shall mean the final plans and specifications for the performance of the Project Improvements prepared by Borrower’s Architect and the Other Design Professionals listed on **Schedule III** attached hereto and approved by Lender, the Construction Consultant, as the same may be amended and supplemented from time to time in accordance with the terms of this Agreement.

“Policies” shall have the meaning specified in **Section 6.1.1(e)** hereof.

“Policy” shall have the meaning specified in **Section 6.1.1(e)** hereof.

“Prepayment Date” shall have the meaning set forth in **Section 2.4.4** hereof.

“Prepayment Rate” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in the “Treasury Bonds, Notes and Bills” section in The Wall Street Journal as of such Prepayment Rate Determination Date. If more than one issue of United States Treasury Securities has the same remaining term to the Maturity Date, the “Prepayment Rate” shall be the yield on such United States Treasury Security most recently issued as of the Prepayment Rate Determination Date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

“Prepayment Rate Determination Date” shall mean the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of **Section 2.4.1** hereof.

“Prescribed Laws” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

“Principal” shall mean the Special Purpose Entity that is the general partner of Borrower, if Borrower is a limited partnership, or member of Borrower, if Borrower is a limited liability company.

“Proceeds” shall mean Insurance Proceeds or Condemnation Proceeds.

“Project” shall mean the development and construction of Project Improvements, all in accordance with the Plans and Specifications, all Legal Requirements, this Agreement and the other Loan Documents.

“Project Improvements” shall mean the demolition of all existing improvements located on the Land and the development and construction thereon by Borrower of a multi-anchor community shopping center with a gross leaseable area of approximately 228,862 square feet of floor area and self-storage space of approximately 88,127 square feet of floor area, substantially as depicted on the Plans and Specifications, as the same will be developed, renovated and constructed in accordance with the Plans and Specifications and all Legal Requirements.

“Project Loan” shall mean the loan being made by Lender to Borrower pursuant to the Project Loan Agreement in the principal amount of up to the Project Loan Amount.

“Project Loan Advance” shall mean “Advance” as such term is defined in the Project Loan Agreement.

“Project Loan Agreement” shall mean that certain Project Loan Agreement dated the date hereof among, Lender and Borrower.

“Project Loan Amount” shall mean Twelve Million Six Hundred Thirty-Seven Thousand Ninety-Three and 40/100 Dollars (\$12,637,093.40).

“Project Loan Assignment of Leases” shall mean that certain Project Loan Assignment of Leases and Rents, dated the date hereof, from Borrower, as assignor, to Lender, as assignee.

“Project Loan Budget” shall have the meaning set forth in Section 2.1.14.

“Project Loan Costs” shall mean all Projected Related Costs that are not Costs of the Improvements.

“Project Loan Documents” shall have the meaning as set forth in the Project Loan Agreement.

“Project Loan Earn Out Advance” shall have the meaning set forth in Section 2.12.1 hereof.

“Project Loan Mortgage” shall have the meaning as set forth in the Project Loan Agreement.

“Project Loan Note” shall have the meaning as set forth in the Project Loan Agreement.

“Project-Related Costs” shall mean all direct and indirect costs and expenses of acquiring the Property, demolishing the existing improvements on the Property, designing, inspecting, renovating, constructing and developing the Project Improvements, including, without limitation, Hard Costs and Soft Costs, along with all Carrying Costs, Debt Service, financing charges, Operating Expense and other costs and expenses associated with the Property during the Construction Term.

“Property” shall mean the Land, all Improvements now or hereafter located thereon, the easements and other rights, licenses and privileges and appurtenance to the Land, and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Mortgage and referred to therein as the “Mortgaged Property”.

“Provided Information” shall mean any and all financial and other information provided at any time prepared by, or on behalf of, any Indemnifying Person with respect to the Property, Borrower, Principal, Guarantor and/or Manager, including, without limitation, any financial data or financial statements required under Section 5.1.11.

“Punch List and Deferred Maintenance Reserve Deposit” shall have the meaning set forth in [Section 7.4.1](#).

“Punch List and Deferred Maintenance Reserve Funds” shall have the meaning set forth in [Section 7.4.1](#).

“Punch List Items” shall mean, collectively, any Punch List items identified by the Construction Consultant and other minor or insubstantial details of construction, decoration, mechanical adjustment or installation, which do not hinder or impede the use, operation, or maintenance of the Property or the ability to obtain a permanent certificate of occupancy with respect thereto.

“Qualified Manager” shall mean in the reasonable judgment of Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the Property, *provided*, that Borrower shall have obtained (i) prior written confirmation from the applicable Rating Agencies that management of the Property by such Person will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof and (ii) if such Person is an Affiliate of Borrower, an Additional Insolvency Opinion.

“Rate Lock Agreement” shall mean that certain Extended Rate Lock Agreement-Application Stage dated May 9, 2007 between Borrower and Lender, as amended by that certain First Amendment to Extended Rate Lock Agreement-Application Stage dated as of the date hereof.

“Rating Agencies” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender.

“Related Entities” shall have the meaning set forth in **Section 5.2.11(e)**.

“REMIC Trust” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds any portion of the Note.

“Rentable Space Percentage” shall have the meaning set forth in **Section 6.2.4(a)(B)(iii)**.

“Rents” shall mean, all rents (including percentage rents), rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to the Property, including, without limitation, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, Operating Expenses or other reimbursables payable to Borrower (or to the Manager, for the account of Borrower) under any Lease, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, and proceeds, if any, from business interruption or other loss of income or insurance.

“Replacements” shall have the meaning set forth in **Section 7.3.1**.

“Replacement Management Agreement” shall mean, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, *provided*, with respect to this **subclause (ii)**, Lender, at its option, may require that Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or of such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager at Borrower’s expense.

“Replacement Reserve Account” shall have the meaning set forth in **Section 7.3.1**.

“Replacement Reserve Cap” shall have the meaning set forth in **Section 7.3.1**.

“Replacement Reserve Fund” shall have the meaning set forth in **Section 7.3.1**.

“Replacement Reserve Monthly Deposit” shall have the meaning set forth in **Section 7.3.1**.

“Requested Advance Date” shall have the meaning set forth in **Section 2.14.2(a)**. hereof.

“Required Completion Date” shall mean June 1, 2009, provided, however, that the Required Completion Date may be extended by Lender to December 1, 2009 in Lender’s sole discretion.

“Required Equity Funds” shall have the meaning set forth in **Section 2.11.13**.

“Required Initial Advance Date” shall mean January 10, 2008, provided, however, that Borrower shall have the right to extend the Required Completion **Initial Advance** Date to February 10, 2008, provided that Lender is satisfied that prior to January 10, 2008, Borrower has used commercially reasonable efforts to obtain the Home Depot Estoppel Certificate and the Retaining Wall Letter, and further provided that Lender shall have the right to further extend the Required Initial Advance Date in Lender’s sole discretion.

“Required Ratios at Completion” shall have the meaning set forth in **Section 2.12(j)** hereof.

“Reserve” or **“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the Interest Reserve Funds, the Excess Cash Flow Reserve Funds, the Replacement Reserve Fund, the Punch List and Deferred Maintenance Fund, the Operating Reserve Fund, the Ground Lease Reserve Fund, the Rollover Reserve Fund, the Storage Facility Master Lease Reserve Fund and any other escrow fund established by the Loan Documents.

“Restoration” shall mean the repair and restoration of the Property after a Casualty or Condemnation to substantially the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“Restoration Threshold” shall have the meaning set forth in **Section 6.2.3(a)** hereof.

“Restricted Party” shall mean collectively, (a) Borrower, any Guarantor, and any Affiliated Manager and (b) any shareholder, partner, member, non-member manager, any direct or indirect legal or beneficial owner of, Borrower, any Guarantor, any Affiliated Manager or any non-member manager.

“Retainage” shall mean, for each Contract and Subcontract, the greater of (a) ten percent (10%) of all costs funded to the Contractor or Subcontractor under the Contract or Subcontract, or (b) the actual retainage required under such Contract or Subcontract.

“Retaining Wall Letter” shall have the meaning set forth in **Section 2.10.21** hereof.

“Rollover Reserve Account” shall have the meaning set forth in **Section 7.8.1**.

“Rollover Reserve Cap” shall have the meaning set forth in **Section 7.8.1**.

“Rollover Reserve Fund” shall have the meaning set forth in **Section 7.8.1**.

“Rollover Reserve Monthly Deposit” shall have the meaning set forth in **Section 7.8.1**.

“S&P” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Companies.

“Sale or Pledge” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

“Scheduled Defeasance Payments” shall have the meaning set forth in **Section 2.5.1(b)**.

“Second Tax and Insurance Escrow Deposit” shall have the meaning set forth in **Section 7.1** hereof.

“Securities” shall have the meaning set forth in **Section 9.1** hereof.

“Securities Act” shall have the meaning set forth in **Section 9.2(a)** hereof.

“Securitization” shall have the meaning set forth in **Section 9.1** hereof.

“Self Storage Facility” shall have the meaning set forth in **Section 5.1.44** hereof.

“Servicer” shall have the meaning set forth in **Section 9.5** hereof.

“Servicing Agreement” shall have the meaning set forth in **Section 9.5** hereof.

“Severed Loan Documents” shall have the meaning set forth in **Section 8.2(c)** hereof.

“Shortfall” shall have the meaning set forth in **Section 2.1.10**.

“Soft Costs” shall mean those Building Loan Costs which are not Hard Costs, including but not limited to, architect’s, engineer’s and general contractor’s fees, interest on the Building Loan, recording taxes and title charges in respect of the Building Loan Mortgage and such other non-construction costs as are part of the Cost of the Improvements.

“Special Purpose Entity” shall mean a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof, has complied with and shall at all times comply with the following requirements unless it has received either prior consent to do otherwise from Lender or a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof:

(i) is and shall be organized solely for the purpose of (A) in the case of Borrower, leasing pursuant to the Ground Lease, holding, selling, leasing, transferring, exchanging, managing and operating the Property, entering into and performing its obligations under the Loan Documents with Lender, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (B) in the case of a Principal, acting as a general partner of the limited partnership that owns the Property or as member of the limited liability company that owns the Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, management or operation of the Property, or (B) in the case of a Principal, acting as general partner of the limited partnership that owns the Property or acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not owned and shall not own any real property other than, in the case of Borrower, a fee or leasehold interest in the Property;

(iv) does not have, shall not have and at no time had any assets other than (A) in the case of Borrower, the Property and personal property necessary or incidental to its ownership and operation of the Property or (B) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Property and personal property necessary or incidental to its ownership of such interests;

(v) has not engaged in, sought, consented or permitted to and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company, (B) has two (2) Independent Directors, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.5% (or 0.1%, if the limited partnership is a Delaware entity);

(viii) if such entity is a corporation, has and shall have at least two (2) Independent Director, and shall not cause or permit the board of directors of such entity

to take any Material Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two Independent Directors shall have participated in such vote and shall have voted in favor of such action;

(ix) if such entity is a limited liability company (other than limited liability company meeting all of the requirements applicable to a single-member limited liability company set forth in this definition of "Special Purpose Entity"), has and shall have at least one (1) member that is a Special Purpose Entity, that is a corporation, that has at least two (2) Independent Directors and that directly owns at least one-half-of-one percent (0.5%) of the equity of the limited liability company (or 0.1% if the limited liability company is a Delaware entity);

(x) if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) has and shall have at least two (2) Independent Directors serving as a manager of such company, (C) shall not take any Material Action and shall not cause or permit the members or managers of such entity to take any Material Action, either with respect to itself or, if the company is a Principal, with respect to Borrower, in each case unless one Independent Director then serving as a manager of the company shall have participated and consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company's limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(xi) has not and shall not (and, if such entity is (a) a limited liability company, has and shall have a limited liability agreement or an operating agreement, as applicable, (b) a limited partnership, has a limited partnership agreement, or (c) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity shall not) (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Lender; or (4) without the affirmative vote of two (2) Independent Directors or Independent Managers of itself or the consent of a Principal that is a member or general partner in it: (A) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the entity or a substantial portion of its property; (C) make an assignment for the benefit of the creditors of the entity; or (D) take any action in furtherance of any of the foregoing;

(xii) has at all times been and shall at all times remain solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and has maintained and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xiii) has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) has held and shall hold its assets in its own name;

(xviii) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity;

(xx) has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and

shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) shall have no Indebtedness other than (i) the Loan, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of Borrower, in amounts not to exceed \$525,000, which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to this Agreement;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except as permitted pursuant to this Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing (individually, a "Related Party" and collectively, the "Related Parties"), including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property and no such pledge remains outstanding except to Lender to secure the Loan;

(xxix) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) other than capital contributions and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxxiv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxv) if such entity is a corporation, has considered and shall consider the interests of its creditors in connection with all corporate actions;

(xxxvi) has not had and shall not have any of its obligations guaranteed by any Affiliate except as provided by the Loan Documents;

(xxxvii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower;

(xxxviii) has complied and shall comply with all of the terms and provisions contained in its organizational documents.

(xxxix) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion are true;

(xl) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xli) is, has always been and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;

(xlii) has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority;

(xliii) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that resulted in a judgment against it that has not been paid in full;

(xliv) has no judgments or Liens of any nature against it except for tax liens not yet due and the Permitted Encumbrances;

(xlv) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and

(xlvi) has no material contingent or actual obligations not related to the Property.

"Stabilized Net Cash Flow" shall mean underwritten Gross Income from Operations calculated using an vacancy rate equal to the greater of five percent (5%), the actual vacancy rate for the Property and the market vacancy rate ("**Effective Gross Income**"), less (i) Operating Expenses including a management fee of not less than four percent (4%) of Effective Gross Income and (ii) an adjustment for Replacement Reserves and normalized costs of tenant improvements and leasing commissions of \$235,000.00.

"Stabilized Value" shall mean the value of the Property, determined following the Completion of the Improvements. The Stabilized Value shall be determined based upon an MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days or the date of the Completion of the Improvement occurs made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error.

"Stabilized Loan-to-Value Ratio" shall mean the ratio of the Total Loan Amount to the Stabilized Value.

"State" shall mean, the State or Commonwealth in which the Property or any part thereof is located.

"Storage Facility Master Lease" shall have the meaning set forth in **Section 5.1.44** hereof.

"Storage Facility Master Lease Reserve Account" shall have the meaning set forth in **Section 7.10.1** hereof.

“**Storage Facility Master Lease Reserve Fund**” shall have the meaning set forth in **Section 7.10.1** hereof.

“**Storage Facility Rent**” shall have the meaning set forth in **Section 5.1.44** hereof.

“**Storage Facility Tenant**” shall have the meaning set forth in **Section 5.1.44** hereof.

“**Stored Materials**” shall have the meaning set forth in **Section 2.1.8** hereof.

“**Subcontract**” shall mean any agreement (other than the Architect’s Contract and the General Contractor’s Agreement) entered into by Borrower or by General Contractor, in which the Subcontractor thereunder agrees to provide services, labor and/or materials in connection with the Project Improvements.

“**Subcontractor**” shall mean any subcontractor supplying services, labor and/or materials in connection with the Project Improvements.

“**Subordinate Financing**” shall have the meaning set forth in **Section 9.1.2(b)**.

“**Successor Borrower**” shall have the meaning set forth in **Section 2.5.3** hereof.

“**Survey**” shall mean a survey of the Property prepared by a Surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

“**Surveyor**” shall mean Control Point Associates, Inc., or such other land surveyor registered as such in the State of New York.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in **Section 7.1** hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

“**Tenant**” shall mean the tenant under any Lease.

“**Threshold Amount**” shall have the meaning set forth in **Section 5.1.21(a)** hereof.

“**Title Company**” shall have the meaning set forth in **Section 3.1.3(b)** hereof.

“**Title Insurance Policy**” shall mean, an ALTA mortgagee title insurance policy in the form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to the Property and insuring the lien of the Mortgage.

“**Total Debt**” shall mean, collectively, the Debt and Other Debt.

“**Total Debt Service**” shall mean, with respect to any particular period of time, scheduled payments of principal, if any, and interest under the Building Loan, the Project Loan and, if applicable, the Subordinate Financing.

“**Total Loan Amount**” shall mean the sum of the Building Loan Amount, the Project Loan Amount and the Subordinate Financing, if applicable.

“**Transfer**” shall have the meaning set forth in **Section 5.2.11(b)** hereof.

“**Transferee**” shall have the meaning set forth in **Section 5.2.11(e)**.

“**Transferee’s Principals**” shall mean collectively, (A) Transferee’s managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Rating Agencies, other “**government securities**” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Yield Maintenance Default Premium**” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of the Loan to be prepaid or satisfied and (b) the Defeasance Payment Amount that would be required if a Defeasance Event were to occur at such time (whether or not then permitted) in an amount equal to the outstanding principal amount of the Loan to be prepaid or satisfied.

Yield Maintenance Premium” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of the Loan to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under the Note assuming that all outstanding principal and interest on the Loan is paid on the Open Period Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount being prepaid.

Section 1.2 **Principles of Construction**. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Any reference in this Agreement or in any other Loan Document to any Loan

Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution therefor). Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II.

GENERAL TERMS

Section 2.1 **Loan Commitment; Disbursement to Borrower.**

2.1.1 *Agreement to Lend and Borrow.* Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept Advances in respect of the Building Loan as more particularly set forth in **Section 2.10.**

2.1.2 *No Reborrowings.* Any amount borrowed and repaid hereunder in respect of the Building Loan may not be reborrowed.

2.1.3 *The Note, Mortgage and Loan Documents.* The Building Loan shall be evidenced by the Building Loan Note and secured by the Building Loan Mortgage, the Building Loan Assignment of Leases and the other Building Loan Documents.

2.1.4 *Use of Proceeds.* Borrower hereby agrees that Borrower shall use the proceeds of the Building Loan to pay or reimburse itself for Building Loan Costs actually incurred in connection with demolition and the construction of the Project Improvements if and to the extent that such Building Loan Costs are reflected in the Building Loan Budget, subject to reallocation pursuant to **Sections 2.1.6, 2.1.7 and 5.1.33** (or other reallocations approved by Lender in its sole discretion).

2.1.5 *Advances.* Lender shall not be required to Advance funds hereunder for any category or line item of Building Loan Costs in excess of the amount specified for such line item or category in the Building Loan Budget, subject to **Sections 2.1.6, 2.1.7 and 5.1.33** (or other reallocations approved by Lender in its sole discretion). No Advances shall be made to pay for Affiliate Fees.

2.1.6 *Cost Overruns.* If Borrower becomes aware of any change in actual or projected Project-Related Costs which will increase any one or more category or line item of costs reflected in the Development Budget, Borrower shall immediately notify Lender in writing and promptly submit to Lender for its approval a revised Development Budget. Any reallocation of any category or line items in the Development Budget in connection with cost overruns shall be subject to Lender’s approval in Lender’s sole discretion except as set forth in **Sections 2.1.7 and 5.1.33**, provided, however, under no circumstances shall Borrower be permitted, or Lender obligated to approve, the reallocation of line items from the Building Loan Budget to the Project Loan Budget. Lender shall have no obligation to make any further Advances unless and until the

revised Development Budget so submitted by Borrower is approved by Lender and Borrower has satisfied its obligations with respect to any resulting Shortfall under **Section 2.1.10**. Lender reserves the right to approve or disapprove any revised Development Budget in its sole and absolute discretion (except with respect to reallocations in accordance with **Sections 2.1.7** and **5.1.33**).

2.1.7 **Contingency Reserve**. Following the satisfaction of the Initial Advance Conditions, and subject to the prior approval of Lender in its sole discretion, Borrower may revise the Building Loan Budget to move (i) amounts available under any Line Item for Hard Costs that are designated to "Contingency" to other Line Items for Hard Costs in the Building Loan Budget, or (ii) amounts available under any Line Item for Soft Costs that are designated "Contingency" to other Line Items for Soft Costs in the Building Loan Budget. Any cost savings shall be allocated in accordance with **Section 5.1.33** hereof. In no event may the Contingency Line Item of the Building Loan Budget be reallocated to any Line Item in the Project Loan Budget. The Contingency Line Item in the Building Loan Budget for Hard Costs shall contain at least five percent (5%) of the total projected Hard Costs, separate from the Contingency Line Items in the Project Loan Budget.

2.1.8 **Stored Materials**. Lender shall not be required to disburse any funds for any materials, machinery or other Personal Property not yet incorporated into the Project Improvements (the "**Stored Materials**"), unless the following conditions are satisfied:

(a) Borrower shall deliver to Lender bills of sale or other evidence reasonably satisfactory to Lender of the cost of, and, subject to the payment therefor, Borrower's title in and to such Stored Materials;

(b) The Stored Materials are identified to the Property and Borrower, are segregated so as to adequately give notice to all third parties of Borrower's title in and to such materials, and are components in substantially final form ready for incorporation into the Project Improvements;

(c) The Stored Materials are stored at the Property or at such other third-party owned and operated site as Lender shall reasonably approve, and are protected against theft and damage in a manner satisfactory to Lender, including, if requested by Lender, storage in a bonded warehouse in the greater metropolitan area in which the Property is located;

(d) The Stored Materials will be paid for in full with the funds to be disbursed, and all lien rights or claims of the supplier will be released upon full payment;

(e) Lender has or will have upon payment with disbursed funds a perfected, first priority security interest in the Stored Materials;

(f) The Stored Materials are insured for an amount equal to their replacement costs in accordance with **Section 6.1** of this Agreement;

(g) The aggregate cost of Stored Materials stored at the Property is approved by the Construction Consultant and, if required by Lender, the Construction Consultant shall

certify that it has inspected such Stored Materials and they are in good condition and suitable for use in connection with the Project Improvements; and

(h) The aggregate cost of Stored Materials stored on the Property at any one time shall not exceed ten percent (10%) of the maximum amount of the Loan and the aggregate cost of Stored Materials stored off the Property at any one time shall not exceed five percent (5%) of the maximum amount of the Loan.

2.1.9 Amount of Advances. In no event shall any Advance exceed the full amount of Building Loan Costs theretofore paid or to be paid with the proceeds of such Advance plus any Building Loan Costs incurred by Borrower through the date of the Draw Request for such Advance minus (i) the applicable Retainage for each Contract and Subcontract, and (ii) the aggregate amount of any Advances previously made by Lender. It is further understood that the Retainage described above is intended to provide a contingency fund protecting Lender against failure of Borrower or Guarantor to fulfill any obligations under the Loan Documents, and that Lender may charge amounts to pay for Building Loan Costs against such Retainage in the event Lender is required or elects to expend funds to cure any Default or Event of Default, in either instance, in accordance with the terms of this Agreement. No Advance of the Loan by Lender shall be deemed to be an approval or acceptance by the Lender of any work performed thereon or the materials furnished with respect thereto.

2.1.10 Loan-In-Balance. As used herein, a “**Shortfall**” shall mean, as to any Line Item in the Development Budget as of any date, the amount determined by Lender, in Lender’s sole but reasonable judgment, by which (A) the cost of completing or satisfying such Line Item, exceeds (B) the remaining undisbursed portion of the Loan allocated to such Line Item in the Development Budget plus any sums deposited with Lender pursuant to this Section 2.1.10 to pay for such Line Item and not previously disbursed plus any Reserve Funds to the extent such Reserve Funds are available hereunder for the payment of such Line Item. From time to time and at any time during the Construction Period, Lender shall have the right, but not the obligation, to notify Borrower that it has determined a Shortfall exists as to any one or more Line Items. If Lender at any time shall so notify Borrower, Borrower shall, at its option within five (5) days of Lender’s notification as aforesaid, either: (i) deposit with Lender an amount equal to such Shortfall, which Lender disburse to Borrower to the satisfaction of the costs of such Line Item prior to advancing any further Loan proceeds on account of such costs; (ii) post an irrevocable standby Letter of Credit in the amount of such Shortfall, in favor of Lender; (iii) to the extent permitted under Sections 2.1.7 and 5.1.33, and following the satisfaction of the Initial Advance Conditions allocate the Contingency Reserve, with respect to the Line Item(s) in question, to the Shortfall, and provided, further that the amount of the remaining Contingency Reserve for such Line Item(s) (following the allocation to the Shortfall) is sufficient for such Line Item(s), as determined by Lender in its sole discretion; and (iv) to the extent permitted under Section 5.1.33, and then only following the satisfaction of the Initial Advance Conditions, reallocate cost savings from the Development Budget in respect of the Loan (or other reallocations which are approved by Lender, in its sole discretion) in accordance with the terms of this Agreement, but only to the extent such cost savings can be allocated to the related Line Items. Borrower hereby agrees that Lender shall have a lien on and security interest in, for the benefit of Lender, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid costs as approved by

Lender. Lender shall have no obligation to make any further Advances of proceeds of the Loan as to any Line Item until the sums required to be deposited pursuant to clause (i) above as to such Line Item have been exhausted, or until Borrower has posted an irrevocable standby Letter of Credit pursuant to clause (iii) above, as the case may be, and, in any such case, the Loan is back “in balance”. Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Lender reasonably determines that the amount thereof is more than the excess, if any, of the remaining Project-Related Costs over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, Lender, in its sole discretion, may apply such amounts either to the remaining Project-Related Costs or to the immediate reduction of outstanding principal and/or interest under the Note.

2.1.11 *Quality of Work*. No Advance or any portion thereof shall be made with respect to defective work or to any contractor that has performed work that is defective and that has not been cured, as confirmed by the report of the Construction Consultant, but Lender may disburse all or part of any Advance before the sum shall become due if Lender believes it advisable to do so, and all such Advances or parts thereof shall be deemed to have been made pursuant to this Agreement.

2.1.12 *Required Equity Funds*. All Required Equity Funds shall be contributed (*i.e.*, expended by Borrower and invested by Borrower in the Property, for Project—Related Costs set forth on the approved Development Budget) before the Closing Date.

2.1.13 *Trust Fund*. Pursuant to Section 13 of the New York Lien Law, Borrower shall receive the Advances hereunder and shall hold the right to receive the Advances as a trust fund to be applied first for the purpose of paying the Costs of the Improvements and shall apply the Advances first to the payment of the Cost of the Improvements on the Property before using any part of the total of the same for any other purpose.

2.1.14 *Final Project Report and Development Budget*. Attached hereto as **Schedule II** is Borrower’s detailed and definitive budget of all Project-Related Costs to be incurred by Borrower during the Construction Term and that will be disbursed out of Loan proceeds subject to availability and satisfaction of all applicable conditions to Advances hereunder and under the Project Loan Agreement, being so indicated, delineated by each category of Project-Related Costs (each a “**Line Item**” or “**Budget Line**”) and further broken down to segregate Building Loan Costs and Project Loan Costs, which budget has been approved by Lender and Construction Consultant (the “**Development Budget**”). The portion of the Development Budget that includes only Building Loan Costs is referred to herein as the “**Building Loan Budget**” and the portion of the Development Budget that includes only Project Loan Costs is referred to herein as the “**Project Loan Budget**.”

2.1.15 *Miscellaneous*.

(a) The making of an Advance by Lender shall not constitute Lender’s approval or acceptance of the construction theretofore completed. Lender’s inspection and approval of the Plans and Specifications, the construction of the Project Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the

sole obligation of Lender as the result of such inspection and approval being to make the Advances if and to the extent, required by this Agreement.

(b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT LENDER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE NEW YORK LIEN LAW PROVIDES THAT “NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE LENDER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER,” AND LENDER DOES NOT IMPOSE SUCH AN OBLIGATION ON ITSELF.

Section 2.2 **Interest Rate.**

2.2.1 **Interest Rate.** Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below.

2.2.2 **Interest Calculation.** Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance.

2.2.3 **Default Rate.** In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 **Usury Savings.** This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does

not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 *Monthly Debt Service Payments.* Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from and including the Closing Date up to and including December 31, 2007, which interest shall be calculated in accordance with the provisions of **Section 2.2** hereof, and (b) on each Payment Date commencing on the Payment Date occurring in February, 2008 and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest due for the related Interest Period at the Interest Rate, for such related Interest Period and then to the principal amount of the Loan due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto. Borrower and Lender acknowledge and agree that, on the 15th calendar day of the month preceding each Payment Date during the Construction Term: (a) if and to the extent undrawn funds remain available for Advance under the Project Loan from the Interest Reserve Line Item of the Project Loan Budget, and provided that that no Event of Default or monetary Default then exists under any of the Loan Documents or would occur as a result of such Project Loan Advance, the Monthly Debt Service Amount then due and owing shall be advanced by Lender by a Project Loan Advance under Interest Reserve Line Item of the Project Loan Budget; and (b) if no amount remains available under the Interest Reserve Line Item but and to the extent Interest Reserve Funds are on deposit in the Interest Reserve Account, and no Event of Default or monetary Default then exists under any of the Loan Documents, the Monthly Debt Service Payment Amount then due and payable shall be paid by application of funds from the Interest Reserve Account. Borrower and Lender acknowledge and agree that Lender may automatically make a Project Loan Advance or apply Interest Reserve Funds on deposit in the Interest Reserve Account on each Payment Date occurring during the Construction Term, in either instance, in accordance with this **Section 2.3.1**, without the need for Borrower to submit a Draw Request or otherwise request such an Advance or application.

2.3.2 *Payments Generally.* The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2007. Thereafter each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 *Payment on Maturity Date.* Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and

all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 *Late Payment Charge*. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 *Method and Place of Payment*. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 **Prepayments**.

2.4.1 *Voluntary Prepayments*. Except as otherwise provided in this **Section 2.4.1** and **Section 2.4.2**, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. If for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date three (3) months prior to the Maturity Date (the "**Open Period Date**"), or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part, without payment of the Yield Maintenance Premium.

2.4.2 *Mandatory Prepayments*. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to **Section 6.4** hereof, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; *provided, however*, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this **Section 2.4.2**.

2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in Section 2.4.1 hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a “**Prepayment Date**”) provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. If for any reason Borrower prepaies the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment.

2.4.5 Application of Prepayments to Components. Any prepayment of the principal of the Loan, in whole or in part, voluntary or involuntary, shall be applied (a) first, to the reduction of the outstanding principal balance of the Project Loan until reduced to zero, and (b) second, to the reduction of the outstanding principal balance of the Building Loan until reduced to zero. Subsequent to any Event of Default, any payment of principal from whatever source may be applied by Lender between the various components of the Loan in Lender’s sole discretion.

Section 2.5 Defeasance.

2.5.1 Voluntary Defeasance (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntary prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a “**Defeasance Event**”)

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the “**Defeasance Date**”) on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed

from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iv) Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with **Section 2.5.1(b)** below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this **Section 2.5** (the “**Security Agreement**”);

(vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code as a result of such Defeasance Event;

(vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;

(viii) Borrower shall deliver an Officer’s Certificate certifying that the requirements set forth in this **Section 2.5.1(a)** have been satisfied;

(ix) Borrower shall deliver a certificate of Borrower’s independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in **Section 2.6** hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Open Period Date (the "**Scheduled Defeasance Payments**"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Clearing Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this **Section 2.5** and satisfy Borrower's other obligations under this **Section 2.5** and **Section 2.6** shall be remitted to Borrower.

2.5.2 Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 Successor Borrower. In connection with any Defeasance Event, Borrower shall establish a successor entity (the "**Successor Borrower**"), which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be

payable upon a transfer of the Note in accordance with this **Section 2.5.3**, but Borrower shall pay all costs and expenses incurred by Lender, including Lender's attorneys' fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 **Release of Property**. Except as set forth in this **Section 2.6**, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 Release of Property.

(a) If Borrower has elected to defease the Loan and the requirements of **Section 2.5** and this **Section 2.6** have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 **Release on Payment in Full**. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 **Clearing Account/Cash Management**. On or prior to the Closing Date, Borrower shall, at its sole cost and expense, cause each of the following to occur to the satisfaction of Lender (collectively, the "**Cash Management Conditions**"): (a) Borrower shall establish an Eligible Account (the "**Clearing Account**") with an Eligible Institution selected by Borrower and approved by Lender (the "**Clearing Bank**"); (b) Borrower shall cause the Clearing Bank to execute and deliver the Clearing Account Agreement in accordance with **Section 2.7.1(b)**; (c) Borrower shall establish an Eligible Account (the "**Cash Management Account**") with an the Cash Management Bank designated by Lender pursuant to and in accordance with the Cash Management Agreement and **Section 2.7.2** hereof; (d) Borrower shall deliver a Payment Direction Letter to the Tenant under any Lease then or thereafter in effect and provide Lender with reasonably satisfactory evidence that the Tenant under such Lease has confirmed that it shall comply with the terms thereof; (e) Borrower will take all actions necessary to establish and maintain in favor of Lender a perfected first priority security interest in the Clearing Account and Cash Management Account and all deposits at any time contained in either such account and the proceeds thereof, including, without limitation, executing and filing UCC-1 Financing Statements; (f) Borrower shall deliver to Lender an opinion of Borrower's counsel with respect to the due execution, authority, enforceability of the Cash Management Agreement

and Clearing Account Agreement and confirming that Lender has first priority perfected security interest in the Cash Management Account and Clearing Account and such other matters as Lender may reasonably require, all such opinions in form, scope and substance satisfactory to Lender and Lender's counsel; and (g) Borrower shall reimburse Lender for any and all cost and expenses, including reasonable attorney's fees and disbursements, resulting from the foregoing.

2.7.1 *Clearing Account.*

(a) Borrower shall establish and maintain the Clearing Account with the Clearing Bank on or prior to the Closing Date, and thereafter Borrower shall maintain the Clearing Account at all times during the remainder of the term of the Loan. The Clearing Account shall be entitled "P/A-Acadia Pelham Manor, LLC, as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 10, 2007 — Clearing Account". Borrower hereby grants to Lender a first-priority security interest in the Clearing Account and all deposits at any time contained therein and the proceeds thereof. All monies now or hereafter deposited into the Clearing Account shall be deemed additional security for the Debt.

(b) Borrower shall obtain from the Clearing Bank and deliver to Lender an agreement, in form and substance satisfactory to Lender (the "**Clearing Account Agreement**"), pursuant to which: (i) Borrower and Clearing Bank acknowledge and agree that during a Cash Trap Period, Lender shall have the sole right to make withdrawals from the Clearing Account and all costs and expenses for establishing and maintaining the Clearing Account shall be paid by Borrower; (ii) upon notice from Lender that a Cash Trap Period exists, the Clearing Bank agrees to transfer to the Cash Management Account in immediately available funds by federal wire transfer all amounts on deposit in the Clearing Account once every Business Day during the term of the Loan.

(c) Borrower shall (i) deliver irrevocable written instructions to all tenants under Leases to deliver all Rents (including additional rent, payable thereunder directly to the Clearing Account, and (ii) deliver irrevocable written instructions to each of the credit card companies or credit card clearing banks with which Borrower or Manager has entered into merchant's agreements to deliver all receipts payable with respect to the Property directly to the Clearing Account (collectively, the "**Payment Direction Letters**"). Borrower and Manager shall deposit all amounts received by Borrower or Manager constituting Rents into the Clearing Account within one (1) Business Day after receipt thereof.

(d) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Clearing Account to the payment of the Debt in any order in its sole discretion.

(e) The Clearing Account shall be an Eligible Account and shall not be commingled with other monies held by Borrower or Clearing Bank.

(f) Borrower shall not further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to

attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Clearing Account and/or the Clearing Account Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Clearing Account was established.

2.7.2 Cash Management Account.

(a) Pursuant to and in accordance with the Cash Management Agreement, Borrower shall establish and maintain a segregated Eligible Account (the “**Cash Management Account**”) to be held by an Eligible Institution selected by Lender (the “**Cash Management Bank**”) in trust and for the benefit of Lender, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled “P/A-Acadia Pelham Manor, LLC as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 10, 2007 — Cash Management Account.” Borrower hereby grants to Lender a first priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, executing and filing UCC-1 Financing Statements and continuations thereof. Borrower will not in any way alter or modify the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) During a Cash Trap Period, and provided no Event of Default shall have occurred, on each Payment Date (or, if such Payment Date is not a Business Day, on the immediately preceding Business Day), all funds on deposit in the Cash Management Account shall be applied as set forth in the Cash Management Agreement

(c) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Lender shall provide notice thereof to Borrower.

(e) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default may be applied by Lender in such order and priority as Lender shall determine.

(f) Notwithstanding anything to the contrary herein, all transfers of Borrower's funds from the Cash Management Account or other sources to or for the benefit of any mezzanine lender under any Subordinate Financing pursuant to this Agreement or any of the other Loan Documents shall constitute distributions from Borrower to the Mezzanine Borrower and must comply with the requirements as to distributions of the Delaware Limited Liability Company Act. No provision of any of the Loan Documents shall create a debtor-creditor relationship between Borrower and any mezzanine or subordinate lender.

2.7.3 Payments Received Under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited on a monthly basis into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

Section 2.8 **Intentionally Omitted**.

Section 2.9 **Payments Not Conditional**. All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.10 **Initial Advance**. The obligation of Lender to make the initial Advance of the Building Loan (the "**Initial Advance**") shall be subject to the following conditions precedent (collectively, the "**Initial Advance Conditions**") on or prior to the Required Initial Advance Date, all of which conditions precedent must be satisfied prior to Lender making any such Initial Advance:

2.10.1 Prior Conditions Satisfied. All conditions precedent to closing shall continue to be satisfied as of the date of the Initial Advance (in the same manner in which they were satisfied for the closing without reimposing any one-time condition).

2.10.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Initial Advance, and on the date of such Initial Advance there shall exist no Default or Event of Default.

2.10.3 Representations and Warranties. The representations and warranties made by Borrower or Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of the Initial Advance.

2.10.4 No Damage. The Project Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall be satisfied that sufficient insurance proceeds will be available in the reasonable judgment of Lender to effect the

satisfactory restoration of the Project Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.10.5 Government Approvals. Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the construction of the Project Improvements as contemplated by the Plans and Specifications, have been obtained and are in full force and effect, including, without limitation, the final approval of the Plans and Specifications by the all applicable Governmental Authorities for the Project Improvements and building permit(s) covering the entire scope of work contemplated by the Project Improvements in accordance with the approved Plans and Specification lawfully issued to Borrower.

2.10.6 Final Project Report. The Final Project Report shall have been delivered to Lender by the Construction Consultant.

2.10.7 Development Budget. Borrower shall have prepared and Lender and Construction Consultant shall have approved the Development Budget (including both the Building Loan Budget and the Project Loan Budget) and the Disbursement Schedule.

2.10.8 Plans and Specifications. Two (2) complete sets of the Plans and Specifications and any and all modifications and amendments made thereto which have been reviewed and approved by (A) Lender, and (B) the Construction Consultant. Borrower shall deliver to Lender a list identifying the Plans and Specifications and any and all modifications and amendments made thereto.

2.10.9 General Contractor's Agreement. Borrower and the General Contractor have entered into a Standard Form of Agreement between Owner and Construction Manager where Construction Manager is NOT a Constructor dated as of February 22, 2006 that obligates the General Contractor to cause the Completion of the Improvements to occur prior to the Required Completion Date reasonably acceptable to Lender and the Construction Consultant in both form and substance (once approved, the "**General Contractor's Agreement**"). The General Contractor's Agreement, shall have been duly executed and delivered by the parties thereto, shall be in full force and effect and Lender shall have received a certified copy or a fully executed duplicate original thereof. The General Contractor shall have duly executed and delivered to Lender a consent to the assignment of the General Contractor's Agreement, in form and substance reasonably satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. If General Contractor consist of more than one Person, then each such Person shall deliver a consent to the assignment of the General Contractor's Agreement, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof.

2.10.10 Architect's and General Contractor's Certificates. Certificates from the Borrower's Architect (the "**Architect's Certificate**") substantially in the form attached hereto as **Exhibit F** and from the General Contractor (the "**General Contractor's Certificate**") substantially in the form attached hereto as **Exhibit G**.

2.10.11 Contracts and Subcontracts. Borrower shall have delivered to Lender, and Lender and Construction Consultant shall have approved a list, certified by Borrower, of all Contractors and Subcontractors who have been or, to the extent identified by Borrower, will be supplying labor or materials for the Property. The list of Contractors and Subcontractors may be amended from time to time subject to the approval of Lender and Construction Consultant, in accordance with the terms hereof. Borrower shall have delivered to Lender all Contract and Major Contracts for all of the work necessary for Completion of the Improvements, and Lender and Construction Consultant shall have approved all such Major Contracts. No Advance shall be made by Lender with regard to work done by or on behalf of any Contractor or Subcontractor unless Borrower shall have delivered to Lender and Construction Consultant originals of the following documents as to such Contractor or Subcontractor, each in form and substance reasonably satisfactory to Lender:

(a) Performance Letters. if requested by Lender, a performance letter (“**Performance Letter**”) substantially in the form attached hereto as **Exhibit H** from such Contractors and/or Subcontractors as Lender shall designate.

(b) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.12 Contractors’ Consent to Assignment. Each Contractor, Sub-Contractor and Other Design Professionals shall have delivered a consent to the assignment of each of their Contracts, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original of each such Contract.

2.10.13 Cash Management. Lender has determined that the Cash Management Conditions have been satisfied.

2.10.14 Notices. All notices required by any Governmental Authority or by any applicable Legal Requirement to be filed prior to commencement of construction of the Project Improvements shall have been filed.

2.10.15 Deliveries. Lender shall have received:

(a) Draw Request. A Draw Request complying with the requirements hereof;

(b) Affirmation of Payment. An Affirmation of Payment;

(c) Title Insurance Policy. A Title Insurance Policy for the full amount of the Loan, which includes a pending disbursement clause to increase the coverage of the Title Insurance Policy by the amount of the any Construction Advance, insuring the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances;

(d) Lien Waivers. Duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form set forth in **Exhibit J** from the General Contractor and all Contractors and Subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for

such work or labor and/or materials for which payment thereof is requested, as to which duly executed lien waivers shall be delivered to Lender with the next request for an Advance;

(e) Ratios. Evidence satisfactory to Lender that following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 80%;

(f) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents;

(g) Anticipated Costs Report. An Anticipated Costs Report; and

(h) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.16 Building Loan Agreement Filed. This Building Loan Agreement shall have been filed in the Westchester County Clerk's Office.

2.10.17 Initial Project Loan Advance. All conditions to the initial advance of the Project Loan set forth in Section 2.10 of the Project Loan Agreement shall have been satisfied.

2.10.18 Rate Lock Agreement. Simultaneously with the Initial Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Initial Advance bears to the Total Loan Amount.

2.10.19 Home Depot Estoppel Certificate. Borrower shall have delivered to Lender an estoppel certificate from Home Depot certifying to Lender that the Home Depot Lease is in full force and effect and that there are no defaults by Borrower or Home Depot thereunder, and otherwise in form and substance satisfactory to Lender in Lender's sole discretion (the "**Home Depot Estoppel Certificate**").

2.10.20 Initial Reserve Deposits. Borrower shall have deposited the Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit with Lender. The Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit shall be funded on the date of the Initial Advance with a portion of the Initial Advance under the Project Loan.

2.10.21 Retaining Wall Letter. Borrower shall have delivered to Lender a letter from the Village of Pelham Manor evidencing resolution of the retaining wall issue in form and substance satisfactory to Lender in Lender's sole discretion (the "**Retaining Wall Letter**").

2.10.22 Satisfaction of Initial Advance Conditions. Borrower covenants and agrees that, prior to the Required Initial Advance Date, time being of the essence, it shall cause all of the Initial Advance Conditions to be satisfied. Borrower shall not perform any work at the Property, including, without limitation, any demolition of the existing improvements, until all of the Initial Advance Conditions have been satisfied. Borrower's failure to satisfy, or cause the satisfaction of, any of the Initial Advance Conditions on or prior to the Required Initial Advance

Date shall, at Lender's election, constitute an Event of Default. In addition to any and all other remedies that may be available to Lender hereunder, under the other Loan Documents, at law or in equity, upon the occurrence of an Event of Default resulting from the failure of any Initial Advance Condition to have been satisfied, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, with full power of substitution to complete or undertake such steps as may be necessary, in Lender's sole determination, to satisfy the Initial Advance Condition in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Initial Advance Conditions, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the Project; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement and the other Loan Documents. In addition, upon such Event of Default, Lender shall have the right to unwind any interest rate hedge entered into by Lender and apply any deposits or other amounts held by Lender pursuant to the Rate Lock Agreement to costs and expenses incurred by Lender under this Agreement, the Rate Lock Agreement or any of the other Loan Documents.

Section 2.11 **Construction Advances**. The obligation of Lender to make the Advances of the Building Loan after the Initial Advance shall be subject to the following conditions precedent (collectively, the "**Construction Advance Conditions**"), all of which conditions precedent must be satisfied prior to Lender making any such Advance:

2.11.1 *Prior Conditions Satisfied*. All conditions precedent to any prior Advance (in the same manner in which they were satisfied for the Initial Advance or prior Advance, as applicable, and without reimposing any one-time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

2.11.2 *Performance; No Default*. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Advance, and on the date of such Advance there shall exist no Default or Event of Default or Shortfall.

2.11.3 *Representations and Warranties*. The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Advance.

2.11.4 *No Damage*. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall have received insurance proceeds sufficient in the reasonable judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.11.5 Deliveries. The following items or documents shall have been delivered to Lender:

(a) Anticipated Costs Report. An anticipated cost report (“**Anticipated Costs Report**”) in the form set forth in **Exhibit I** executed by the General Contractor which sets forth the anticipated costs to complete construction of the Project Improvements, after giving effect to costs incurred during the previous month and any anticipated change orders;

(b) Endorsement to Title Insurance Policy. A “datedown” endorsement to Lender’s title insurance policy as described in the form set forth in **Exhibit C** hereto, which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender;

(c) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents.

(d) Draw Request. A Draw Request complying with the provisions of this Agreement which shall constitute Borrower’s representation and warranty to Lender that: (a) any completed construction is substantially in accordance with the Plans and Specifications, (b) all costs for the payment of which Lender have previously advanced funds have in fact been paid, (c) all the representations and warranties contained in **Article IV** of this Agreement continue to be true and correct in all material respects, (d) no Event of Default shall have occurred and be continuing hereunder, and (e) Borrower continues to be in compliance in all respects with all of the other terms, covenants and conditions contained in this Agreement.

(e) Affirmation of Payment. General Contractor’s Affirmation of Payment (“**Affirmation of Payment**”) (AIA Form G706) in the form attached hereto as **Exhibit E**.

(f) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.11.6 Construction Consultant Certificate. Each draw request relating to Hard Costs shall be accompanied by a certificate or report of the Construction Consultant to Lender based upon a site observation of the Property made by the Construction Consultant not more than thirty (30) days prior to the date of such draw, in which the Construction Consultant shall in substance: (i) verify that the portion of the Project Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications; and (ii) state its estimate of (1) the percentages of the construction of the Project Improvements completed as of the date of such site observation on the basis of work in place as

part of the Project Improvements and the Building Loan Budget, (2) the Hard Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (3) the sum necessary to complete construction of the Project Improvements in accordance with the Plans and Specifications, and (4) the amount of time from the date of such inspection that will be required to achieve Completion of the Improvements.

2.11.7 Other Bids. If in the reasonable judgment of Lender and the Construction Consultant all Contracts, Major Contracts, and the General Contractor's Agreement do not cover all of the work necessary for Completion of the Improvements, Borrower shall cause to be furnished firm bids from responsible parties, or estimates and other information reasonably satisfactory to Lender, for the work not so covered, to enable Lender to ascertain the total estimated cost of all work done and to be done.

2.11.8 Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

2.11.9 Lien Waivers. Borrower shall have delivered duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as applicable, and otherwise substantially in the form set forth in **Exhibit J**, from the General Contractor, all Major Contractors and Major Subcontractors for all work performed, and all labor or material supplied for which payment thereof has been made prior to the date of the Advance.

2.11.10 Construction Consultant Approval. Lender has received advice from the Construction Consultant, satisfactory to Lender, as to Construction Consultant's determination, acting reasonably, based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower's Requisition of the value of the labor and materials in place, that the construction of the Project Improvements is proceeding satisfactorily and according to schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Construction Consultant's satisfaction and substantially in accordance with the Plans and Specifications.

2.11.11 Ratios. Following such Advance (and any Project Loan Advance being made on such date), the Loan-to-Cost Ratio shall be no greater than 80%.

2.11.12 Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

2.11.13 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of each Advance, Borrower has invested Cash equity in an amount equal to or greater than (a) \$8,916,000 or (b) 20% of the Total Project Costs or (c) the difference between the Development Budget and the maximum Loan

amount of \$35,664,000 for approved Project-Related Costs (the “**Required Equity Funds**”). Notwithstanding the foregoing, if the Borrower realizes cost savings from the development of the Project, either in the form of Hard Costs or Soft Costs, Advances may be advanced to Borrower provided that (i) the Borrower would not have less than \$8,916,000 of cash equity in the Project through such Advance and (ii) the Debt Service Coverage Ratio shall be equal to or greater than 1.15 to 1.0 assuming a fully advanced Loan using a debt service constant of 7.31%, and (iii) the loan-to-value ratio for the Property is no greater than 80% assuming a fully advanced Loan. If Borrower is in non-compliance solely with respect to condition (i) above, at Borrower’s option, either (A) any excess cost savings (funds in excess of the amount so that the Required Equity Funds shall continue to be satisfied) shall be deposited as follows: (1) 100% into the Replacement Reserve Account until the amount on deposit in such account equals the Replacement Reserve Cap, and then (2) 100% of any excess into the Rollover Reserve Account until the amount on deposit in such account equals the Rollover Reserve Cap, and then (3) 100% of any excess into any other Reserves required by Lender pursuant to this Agreement, or (B) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement. If Borrower is in compliance with respect to condition (i) above but is not in compliance with conditions (ii) and (iii) above, any excess cost savings shall, at Borrower’s option, (A) be held back by Lender as additional collateral for the Loan until satisfaction of each of the requirements are satisfied, or (B) be deposited as follows: (1) 100% into the Replacement Reserve Account until the amount on deposit in such account equals the Replacement Reserve Cap, and then (2) 100% of any excess into the Rollover Reserve Account until the amount on deposit in such account equals the Rollover Reserve Cap, and then (3) 100% of any excess into any other Reserves required by Lender pursuant to this Agreement, or (C) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement.

2.11.14 Rate Lock Agreement. Simultaneously with each Construction Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Construction Advance bears to the Total Loan Amount, provided, however, that in the event that any of the conditions of Section 2.11.13 are not satisfied, Lender shall have the right to apply the portion of the deposit under the Rate Lock Agreement to be returned to Borrower to satisfy the conditions of Section 2.11.13.

2.11.15 Home Depot Contribution. In the event that Borrower receives any portion of the Tenant Contribution (as defined in the Home Depot Lease) payable to Borrower pursuant to that certain Sublease dated as of December 21, 2006 (the “**Home Depot Lease**”), with Home Depot U.S.A., Inc. (“**Home Depot**”) or the proceeds of any letter of credit delivered by Home Depot pursuant to the Home Depot Lease as security for Home Depot’s obligation to pay the Tenant Contribution, Borrower shall apply such Tenant Contribution or the proceeds of such letter of credit, as applicable, to the payment of Project Related Costs and shall provide Lender with evidence that such Tenant Contribution or proceeds, as applicable, have been applied to the payment of Project Related Costs prior to Lender making any further Advances under this Agreement.

Section 2.12 **Final Advance.**

2.12.1 *Conditions to Release of Final Advance.* In addition to the conditions set forth in **Section 2.10** and **Section 2.11**, above, Lender's obligation to make the final Advance in the amount calculated pursuant to **Section 2.12.2** of this Agreement (the "**Final Advance**") shall be subject to receipt by Lender of the following:

(a) **Completion of Improvements.** Evidence satisfactory to Lender and the Construction Consultant that the Completion of the Improvements has occurred.

(b) **Final Project Loan Advance.** All conditions to the Final Project Loan Advance have been satisfied and the Final Project Loan Advance shall have been made or will be made simultaneously therewith.

(c) **Lien Waivers.** Duly executed final lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form attached hereto as **Exhibit J** from the General Contractor and Major Contractors and Major Subcontractors who have performed work for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied.

(d) **"As-Built" Plans and Specifications.** A full and complete set of "as built" Plans and Specifications certified to by Borrower's Architect.

(e) **Administration Fee.** Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

(f) **Certificates.** Completed AIA Form G704 (Certificate of Substantial Completion) and completed AIA Form G707 (Consent of Surety to Final Payments) shall have been executed and delivered by Borrower's Architect and General Contractor.

(g) **Deposits to Reserves.** If Lender determines that any Punch List Work or Deferred Maintenance Condition exists, the Punch List and Deferred Maintenance Deposit has been made, if Lender determines that the deposits are required to the Operating Reserve Account, the Operating Reserve Deposit has been made, and all other deposits to the Reserve Funds required by this Agreement have been made.

(h) **Other Documents.** Such documents, letters, affidavits, reports and assurances, as Lender, Lender's counsel and the Construction Consultant may reasonably require.

(i) **Required Ratios at Completion.** Lender shall have determined that, following the Final Advance (and taking into consideration the Final Project Loan Advance under the Project Loan): (i) the Loan-to-Cost Ratio shall be no more than 80%; (ii) the Stabilized Loan-to-Value Ratio shall be no more than 80%; (iii) the Stabilized Net Cash Flow for the entire Property shall be not less than \$3,100,000; (iv) the Debt Service Coverage Ratio based on Lender's underwritten Net Operating Income and the greater of the actual debt service constant or 9.30% shall be .99 to 1.0 or greater; and (v) the Debt Service Coverage Ratio based on the

Stabilized Net Cash Flow and the greater of the actual debt service constant or 7.31% shall be 1.15 to 1.0 or greater (the “**Required Ratios at Completion**”), or Borrower shall have deposited with Lender Cash or a Letter of Credit to satisfy the Required Ratios at Completion in accordance with **Section 2.12.2**.

(j) **Tenant Estoppel Certificates**. Borrower shall have delivered to Lender estoppel certificates from all of the tenants at the Property in form and substance satisfactory to Lender.

(k) **Required Equity Funds**. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of the Final Advance, Borrower has invested Cash equity in an amount equal to or greater than the Required Equity Funds or has otherwise complied with the provisions of **Section 2.11.13** with respect thereto.

(l) **Insolvency Opinion**. The issuance of and delivery to Lender of six (6) original counterparty Insolvency Opinions in the form attached hereto as **Exhibit K** from Wachtel & Masyr, LLP or another law firm reasonably acceptable to Lender.

2.12.2 **Amount of Final Advance**. Except as expressly provided for below, the amount of the Final Advance shall be equal to the sum of: (a) any Retainage not previously released and advanced to Borrower; plus (b) the amount of any Punch List and Deferred Maintenance Reserve Deposit; plus (c) the positive difference, if any, between, (i) the Building Loan Amount and (ii) all amounts previously Advanced under the Building Loan (including the amounts described in **clauses (a) and (b)** of the sentence). The portion of the Final Advance described in **clause (c)** of the foregoing sentence is referred to herein as the “**Building Loan Earn Out Advance**” and the corresponding portion of the Final Project Loan Advance is referred to herein as the “**Project Loan Earn Out Advance**” and together with the Building Loan Earn Out Advance, the “**Earn Out Advances**”. Notwithstanding anything to the contrary provided for herein, the Earn Out Advances shall be reduced, pro rata, but not below \$0.00, if and to the extent necessary for the Required Ratios at Completion to be achieved following the Final Advances. In addition, if the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00, Lender shall have the right, but not the obligation, to apply any deposits held by Lender pursuant to the Rate Lock Agreement and any Interest Reserve Funds to the payment of the Building Loan and the Project Loan in such order and priority as Lender shall determine in its sole discretion. If the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00 and the deposits, if any under the Rate Lock Agreement and the Interest Reserve Funds are applied to the payment of the Loan, Borrower shall deposit with Lender Cash or a Letter of Credit satisfactory to Lender in an amount equal to the amount which, if used to pay down the Loan, would result in Stabilized Loan-to-Value Ratio of 80% and a Debt Service Coverage Ratio of 1.15 to 1.00, calculated based upon Lender’s determination on a pro-forma basis of Lender’s Stabilized Net Cash Flow for the 12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 7.31%.

2.12.3 **Rate Lock Agreement**. Upon satisfaction of all of the conditions to the Final Advance set forth in **Section 2.12.1**, and subject to the provisions of **Section 2.12.2**, Lender shall return to Borrower, the remaining deposits, if any, held by Lender under the Rate

Lock Agreement and not applied by Lender in accordance with the provisions of the Rate Lock Agreement and any Interest Reserve Funds held by Lender pursuant to this Agreement.

Section 2.13 **No Reliance**. All conditions and requirements of this Agreement are for the sole benefit of Lender and no other person or party (including, without limitation, the Construction Consultant, the General Contractor and subcontractors (including, without limitation, Major Contractors and Major Subcontractors) and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower. Lender shall have the right, in its sole and absolute discretion, to waive any such condition or requirement.

Section 2.14 **Method of Disbursement of Loan Proceeds**.

2.14.1 **Draw Request to Be Submitted to Lender**. At such time as Borrower shall desire to obtain an Advance, Borrower shall complete, execute and deliver to Lender a Borrower's Requisition in the form attached hereto as **Exhibit L** ("**Borrower's Requisition**").

(a) Borrower's Requisition shall be accompanied by a completed and itemized Application and Certificate for Payment (AIA Document No. G702) attached hereto as **Exhibit M** or similar form approved by Lender, containing the certification of the General Contractor or contractor or subcontractor to whom such payment is made, as applicable, and Borrower's Architect as to the accuracy of same, together with invoices relating to all items of Hard Costs covered thereby and accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the Improvements to the date of the requisition. The cost breakdown shall also show the percentage of completion of each line item on the Building Loan Budget, and the accuracy of the cost breakdown shall be certified by Borrower and by Borrower's Architect. All such applications for payment shall also show all contractors and subcontractors, including Major Contractors and Major Subcontractors, by name and trade, the total amount of each contract or subcontract, the amount theretofore paid to each subcontractor as of the date of such application, and the amount to be paid from the proceeds of the Advance to each contractor and subcontractor;

(b) the completed construction will be reviewed by the Construction Consultant who will certify to Lender as to the value of completed construction, percentage of completion and compliance with Plans and Specifications;

(c) lien waivers from each other Major Contractor and Major Subcontractors for work done and materials supplied by them which were paid for pursuant to any prior Draw Request;

(d) a written request of Borrower for any necessary changes in the Plans and Specifications, the Building Loan Budget, the Disbursement Schedule or the Construction Schedule;

(e) copies of all executed change orders, contracts and subcontracts, and, to the extent requested by Lender, of all inspection or test reports and other documents relating to the construction of the Project Improvements not previously delivered to Lender; and

(f) such other information, documentation and certification as Lender shall reasonably request.

2.14.2 Procedure of Advances.

(a) Each Draw Request shall be submitted to Lender and Construction Consultant at least ten (10) Business Days prior to the date of the requested Advance (the “**Requested Advance Date**”), and no more frequently than monthly. Lender shall make the requested Advance on the Requested Advance Date so long as all conditions to such Advance are satisfied or waived.

(b) Not later than 11:00 A.M. New York City time, on the Requested Advance Date, Lender shall make such Advance available to Borrower in accordance with the terms of this **Section 2.14**.

(c) Each Advance (other than the Final Advance) shall be in an amount of not less than \$500,000.00.

(d) Each Advance shall be made on a Payment Date.

2.14.3 Funds Advanced. Each Advance shall be made by Lender by wire transfer to such checking account of Borrower as specified to Lender in writing or as provided in **Section 2.14.4** below. All proceeds of all Advances shall be used by Borrower only for the purposes for which such Advances were made. Borrower shall not commingle such funds with other funds of Borrower.

2.14.4 Direct Advances to Third Parties. Lender may make, at Lender’s option, any or all Advances directly or through the Title Company to (i) any Contractor, as applicable, for construction expenses which shall theretofore have been approved by Lender and for which Borrower shall have failed to make payment after receipt by Borrower of such applicable Advance, (ii) Borrower’s Architect to pay its fees to the extent funds are allocated thereto in the Building Loan Budget if Borrower shall have failed to do so, (iii) the Construction Consultant to pay its fees, (iv) Lender’s counsel to pay its fees, (v) to pay (x) any installment of interest due under the Note, (y) any expenses incurred by Lender which are reimbursable by Borrower under the Loan Documents (including, without limiting the generality of the foregoing, reasonable attorneys’ fees and expenses and other fees and expenses incurred by Lender), provided that Borrower shall theretofore have received notice from Lender that such expenses have been incurred and Borrower shall have failed to reimburse Lender for said expenses beyond any grace periods provided for said reimbursement under the Note, this Agreement or any of the other Loan Documents, or (z) following the occurrence and continuation of an Event of Default, any other sums due to Lender under the Note, this Agreement or any of the other Loan Documents, all to the extent that the same are not paid by the respective due dates thereof, and (vi) any other Person to whom Lender in good faith determines payment is due and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan directly to any such Person or through the Title Company to such Persons in accordance with this

Section 2.14.4 as amounts become due and payable to them hereunder and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. No further authorization from Borrower shall be necessary to warrant such direct Advances to such relevant Person, and all such Advances shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the Mortgage and the other Loan Documents as fully as if made directly to Borrower.

2.14.5 ***One Advance Per Month***. Lender shall have no obligation to make Advances of the Loan more often than once in each calendar month except that Lender, in its sole discretion, shall have the right but not the obligation, to make additional advances per month for interest, fees and expenses due under the Loan Documents.

2.14.6 ***Advances Do Not Constitute a Waiver***. No Advance shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

2.14.7 ***Trust Fund Provisions***. All proceeds advanced hereunder shall be subject to the trust fund provisions of **Section 13** of the Lien Law. The affidavit attached hereto as **Exhibit D** is made pursuant to and in compliance with **Section 22** of the Lien Law, and, if so indicated in said affidavit, Building Loan proceeds will be used, in part, for reimbursement for payments made by the Borrower prior to the Initial Advance hereunder but subsequent to the commencement of the construction and equipping of the Improvements for items constituting Costs of the Improvement.

2.14.8 ***Advances and Disbursements Under Completion Guaranty***. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, Borrower hereby irrevocably and unconditionally authorizes Lender to make any disbursements of proceeds of the Loan or of any Reserve Funds held by Lender to Guarantor in accordance with the Guaranty of Completion.

Section 2.15 **Plan Review Process**.

(a) Borrower hereby acknowledges and agrees that neither Lender nor the Construction Consultant's approval of any Plans and Specifications (or any revisions thereto), nor its inspection of the performance of the construction, nor its right to inspect such work, shall impose upon Lender and/or Construction Consultant any obligation or liability whatsoever with respect thereto, including, without limitation, any obligation or liability that might arise as a result of such work not being performed in accordance with applicable laws and/or requirements of public authorities or with the Plans and Specifications (and revisions thereto) approved by Lender and Construction Consultant or otherwise. The review or approval by Lender and Construction Consultant of any Plans and Specifications or any revisions thereto is solely for Lender's benefit, and is without any representation or warranty whatsoever with respect to the adequacy, correctness or efficiency thereof or otherwise. The granting by Lender and/or Construction Consultant of its approval of any Plans and Specifications or any revisions thereto, shall not in any manner constitute or be deemed to constitute a judgment or acknowledgment by Lender as to their legality or compliance with laws and/or requirements of public authorities.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Closing**. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

3.1.1 Representations and Warranties; Compliance with Conditions. The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

3.1.2 Loan Agreement and Note. Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.

(a) Mortgage, Assignment of Leases. Lender shall have received from Borrower fully executed and acknowledged counterparts of the Mortgage and the Assignment of Leases and evidence that counterparts of the Mortgage and Assignment of Leases have been delivered to the Title Company for recording, in the reasonable judgment of Lender, so as to effectively create upon such recording valid and enforceable Liens upon the Property, of the requisite priority, in favor of Lender or Lender's nominee (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) Title Insurance. Lender shall have received the Title Insurance Policy issued by a title company acceptable to Lender (the "**Title Company**") and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Insurance Policy shall (i) provide coverage in amounts satisfactory to Lender, (ii) insure Lender that the Mortgage creates a valid lien on the Property of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Insurance Policy have been paid.

(c) Survey. Lender shall have received a title survey for the Property, certified to the Title Company and Lender and their successors and assigns, in form and content satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by American Land Title Association, American Congress on Surveying &

Mapping and National Society of Professional Surveyors in 1999 or in such other form as Lender shall approve (the “**Survey**”). The Survey shall reflect the same legal description contained in the Title Insurance Policy referred to in clause (b) above and shall include, among other things, a metes and bounds description of the real property comprising part of the Property reasonably satisfactory to Lender. The surveyor’s seal shall be affixed to the Survey and the surveyor shall provide a certification for the Survey in form and substance acceptable to Lender.

(d) Insurance. Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its sole discretion, and evidence of the payment of all premiums payable for the existing policy period.

(e) Environmental Reports. Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of the Property, in each case satisfactory in form and substance to Lender.

(f) Zoning. Evidence reasonably acceptable to Lender confirming that the Project Improvements can be developed and constructed in accordance with the Plans and Specifications “as of right” without requiring the issuance of any zoning variance or other discretionary permit and/or approval and such other matters as Lender may reasonably require.

(g) Encumbrances. Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date with respect to the Mortgage, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

3.1.4 Related Documents. Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

3.1.5 Delivery of Organizational Documents. On or before the Closing Date, Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all organizational documentation related to Borrower and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, amendments (as requested by Lender), good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

3.1.6 Opinions of Borrower’s Counsel. Lender shall have received opinions from Borrower’s counsel with respect to due execution, authority, enforceability of the Loan Documents and such other matters as Lender may reasonably require, including, without limitation, the Insolvency Opinion, all such opinions in form, scope and substance satisfactory to Lender and Lender’s counsel in their sole discretion.

3.1.7 Development Budget. Borrower shall have delivered, and Lender and Construction Consultant shall have approved, the Development Budget and the Disbursement Schedule attached thereto, and certified by Borrower as being true, correct and complete.

3.1.8 Carrying Costs. Borrower shall have paid all Carrying Costs relating to the Property then due and payable including without limitation, (a) accrued but unpaid Insurance Premiums due pursuant to the Policies, (b) currently due Taxes (including any in arrears) relating to the Property, and (c) currently due Other Charges relating to the Property, which amounts shall be funded with proceeds of the Loan.

3.1.9 Completion of Proceedings. All organizational and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance satisfactory to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

3.1.10 Payments. All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

3.1.11 Payment of Fees. Payment by Borrower of all fees and expenses required by this Agreement and/or the other Loan Documents, to the extent due and payable, including, without limitation, Lender's reasonable attorneys' fees and expenses, all origination fees, and brokerage commissions.

3.1.12 Transaction Costs. Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of environmental reports, Physical Conditions Report, appraisals and other reports, the fees and costs of Lender's counsel, and all other third party out-of-pocket expenses incurred in connection with the origination and closing of the Loan.

3.1.13 Material Adverse Change. There shall have been no material adverse change in the financial condition or business condition of Borrower, any one or more of the Persons comprising Guarantor that, in the aggregate, constitutes a material adverse change in the financial condition of the Guarantor collectively, or a material adverse change in the Property since the date of the most recent financial statements delivered to Lender. The income and expenses of the Property, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower, Guarantor nor any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

3.1.14 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that Borrower has contributed the Required Equity Funds for approved Project-Related Costs.

3.1.15 Ratios. Following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 80%.

3.1.16 Intentionally Omitted

3.1.17 Physical Conditions Report. Lender shall have received a Physical Conditions Report with respect to the Property, which report shall be issued by an engineer selected by Lender and shall be reasonably satisfactory in form and substance to Lender.

3.1.18 The Architect's Contract. The Architect's Contract in form and substance satisfactory to Lender, shall have been duly executed and delivered by the parties thereto, shall be in full force and effect and Lender shall have received a certified copy or a fully executed duplicate original thereof. Borrower's Architect shall have duly executed and delivered to Lender a consent to the assignment of the Architect's Contract, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. If Borrower's Architect consists of more than one Person, then each such Person shall deliver a consent to the assignment of the Architect's Contract in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. All Other Design Professionals shall deliver a consent to the assignment to each of their Contracts, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original of each such Contract.

3.1.19 Appraisal. Lender shall have received an appraisal of the Property, from an appraiser selected by Lender, which appraisal shall be satisfactory in form and substance to Lender.

3.1.20 Deliveries. The following items or documents shall have been delivered to Lender:

(a) Plans and Specifications. Two (2) complete sets of the Plans and Specifications and any and all modifications and amendments made thereto which have been reviewed and approved by Lender and the Construction Consultant. Borrower shall deliver to Lender a list identifying the Plans and Specifications and any and all modifications and amendments made thereto.

(b) Insurance. All Policies of insurance (or certificates thereof) required by **Section 6.1** of this Agreement or any other Loan Document.

(c) Final Project Report. The Final Project Report shall have been delivered to Lender by the Construction Consultant.

(d) Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

(e) Construction Schedule. The Construction Schedule, certified by Borrower as being true, correct and complete, which shall have been approved by Lender and the Construction Consultant.

3.1.21 Management Agreement. Lender shall have received a certified copy of each Management Agreement with respect to the Property which shall be satisfactory in form and substance to Lender.

3.1.22 Subordination. Lender shall have received the Subordination of Affiliate Fee executed by Borrower, Guarantor, each member of Borrower or any other Affiliate of Borrower entitled to an Affiliate Fee.

3.1.23 Ground Lease/Estoppels. Lender shall have received a fully executed copy of the Ground Lease in form and substance satisfactory to lender together with an executed estoppel letter from the Ground Lessor, which shall be in form and substance satisfactory to Lender.

3.1.24 Further Documents. Lender or its counsel shall have received such other documents and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. Borrower represents and warrants as of the date hereof and as of the Closing Date that:

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property. The ownership interests in Borrower are as set forth on the organizational chart attached hereto as Schedule I.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending, or threatened against or affecting Borrower, Guarantor or the Property, which actions, suits or proceedings, if determined against Borrower, Guarantor or the Property, might materially adversely affect the condition (financial or otherwise) or business of Borrower, Guarantor or the condition or ownership of the Property.

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted pursuant to clause (xx) of the definition of "Special Purpose Entity" set forth in **Section 1.1** hereof and (b) obligations under the Loan Documents.

4.1.6 Title. Borrower has good, marketable and insurable leasehold title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower's ability to repay the Loan. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property

which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower or any Guarantor in the last seven (7) years, and neither Borrower nor any Guarantor in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any Guarantor is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower's assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.8 Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9 No Plan Assets. Borrower does not sponsor, is not obligated to contribute to, and is not itself an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state or other statute, regulation or other restriction regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement, including but not limited to the exercise by Lender of any of its rights under the Loan Documents.

4.1.10 Compliance. Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. To the best of Borrower's knowledge, Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents.

4.1.11 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Property, as applicable, as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof as a mixed use retail and self-storage facility, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower from that set forth in said financial statements.

4.1.12 Condemnation. No Condemnation or other proceeding has been commenced or, to Borrower's best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

4.1.15 Not a Foreign Person. Borrower is not a "foreign person" within the meaning of §1445(f)(3) of the Code.

4.1.16 Separate Lots. The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

4.1.17 Assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.18 Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors' rights and the enforcement of debtors' obligations), and neither Borrower nor Guarantor have asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.19 No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

4.1.20 Insurance. Borrower has obtained and has delivered to Lender certified copies of the Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

4.1.21 Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

4.1.22 Ground Lease. Borrower hereby represents and warrants to Lender the following with respect to the Ground Lease:

(a) **Recording; Modification**. A memorandum of the Ground Lease has been duly recorded. The Ground Lease permits the interest of Borrower to be encumbered by a mortgage or the Ground Lessor has approved and consented to the encumbrance of the Property by the Mortgage. There have been no amendments or modifications to the terms of the Ground Lease since recordation of the Ground Lease (or a memoranda thereof), with the exception of written instruments which have been delivered to Lender. The Ground Lease may not be terminated, surrendered or amended without the prior written consent of Lender; provided that Ground Lessor shall not be prevented from exercising its remedies in accordance with the Ground Lease if the obligations of Borrower under the Ground Lease are not performed as provided in the Ground Lease, subject to notice and cure rights provided to Lender in the Ground Lease.

(b) **No Liens**. Except for the Permitted Encumbrances and other encumbrances of record, Borrower's interest in the Ground Lease is not subject to any Liens or

encumbrances superior to, or of equal priority with, the Mortgage other than the Ground Lessor's related fee interest.

(c) **Ground Lease Assignable.** Borrower's interest in the Ground Lease is assignable without the consent of the Ground Lessor to Lender, the purchaser at any foreclosure sale or the transferee under a deed or assignment in lieu of foreclosure in connection with the foreclosure of the Lien of the Mortgage or transfer of Borrower's leasehold state by deed or assignment in lieu of foreclosure. In connection with the first assignment thereafter, the Ground Lease is further assignable by such transferee and its successors and assigns without the consent of the Ground Lessor, subject to the provisions of Section 11.1(b) of the Ground Lease.

(d) **Default.** As of the date hereof, the Ground Lease is in full force and effect and no default has occurred under the Ground Lease and there is no existing condition which, but for the passage of time or the giving of notice, could result in a default under the terms of the Ground Lease.

(e) **Notice.** The Ground Lease requires the Ground Lessor to give notice of any default by Borrower to Lender prior to exercising its remedies thereunder.

(f) **Cure.** Lender is permitted the opportunity (including, where necessary, sufficient time to gain possession of the interest of Borrower under the Ground Lease) to cure any default under the Ground Lease, which is curable after the receipt of notice of any of the default before the Ground Lessor thereunder may terminate the Ground Lease as set forth in Section 11.8 thereof.

(g) **Term.** The Ground Lease has a term which extends not less than ten (10) years beyond the Maturity Date.

(h) **New Lease.** The Ground Lease requires the Ground Lessor to enter into a new lease upon termination of the Ground Lease for any reason, including rejection or disaffirmation of the Ground Lease in a bankruptcy proceeding.

(i) **Insurance Proceeds.** Under the terms of the Ground Lease and the Mortgage, taken together, any related insurance and condemnation proceeds that are paid or awarded with respect to the leasehold interest will be applied either to the repair or restoration of all or part of the Property, with Lender having the right, if the proceeds exceed \$500,000, to hold and disburse the proceeds as the repair or restoration progresses, or to the payment of the outstanding principal balance of the Loan together with any accrued interest thereon.

(j) **Subleasing.** Except as set forth in Article 11 of the Ground Lease, the Ground Lease does not impose any restrictions on subleasing.

4.1.23 **Flood Zone.** None of the Improvements on the Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to **Section 6.1.1(a)(A)** is in full force and effect with respect to the Property.

4.1.24 Required Equity Funds. Borrower represents and warrants to Lender that Borrower has contributed the Required Equity Funds for approved Project-Related Costs.

4.1.25 Boundaries. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy.

4.1.26 Leases. The Property is not subject to any leases other than the Leases described in the rent roll attached hereto as Schedule V and made a part hereof. Borrower is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and, to the best of Borrower's knowledge, (a) there are no defaults thereunder by either party and (b) there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent (including security deposits) has been paid more than one (1) month in advance of its due date. To the best of Borrower's knowledge, all work to be completed by Borrower prior to the date hereof under each Lease has been performed as required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein. To the best of Borrower's knowledge, no tenant listed on Schedule I has assigned its Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No Tenant has no right or option for additional space in the Improvements. Except as otherwise disclosed by the Environmental Report (as defined in the Mortgage), no hazardous wastes or toxic substances, as defined by applicable federal, state or local statutes, rules and regulations, have been disposed, stored or treated by any tenant under any Lease on or about the Property nor does Borrower have any knowledge of any Tenant's intention to use its premises for any activity which, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any toxic or hazardous chemical, material, substance or waste. True, correct and complete copies of the Leases have been provided to Lender and such Leases have not been modified or amended in any way.

4.1.27 Survey. The Survey for the Property delivered to Lender in connection with this Agreement has been prepared in accordance with the provisions of Section 3.1.3(c) hereof, and does not fail to reflect any material matter affecting the Property or the title thereto.

4.1.28 Inventory. Borrower is the owner of all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Mortgage) located on or at the Property and shall not lease any Equipment, Fixtures or Personal Property other than as permitted hereunder.

All of the Equipment, Fixtures and Personal Property are sufficient to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

4.1.29 *Filing and Recording Taxes*. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid, and, under current Legal Requirements, the Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

4.1.30 *Special Purpose Entity/Separateness*.

(a) Until the Total Debt has been paid in full, Borrower hereby represents, warrants and covenants, that Borrower is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in **Section 4.1.30(a)** shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the facts stated and all of the assumptions made in the Insolvency Opinion, including, but not limited to, in any exhibits attached thereto, are true and correct in all respects and all facts stated and all assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects. Borrower has complied and will comply with, all of the assumptions made with respect to Borrower in the Insolvency Opinion. Borrower will have complied and will comply with all of the assumptions made with respect to Borrower in any Additional Insolvency Opinion. Each entity other than Borrower with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

4.1.31 *Property Management Agreement*. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

4.1.33 *Illegal Activity*. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.34 *No Change in Facts or Circumstances; Disclosure*. All information submitted by and on behalf of Borrower to Lender and in all financial statements, rent rolls

(including the Rent Roll attached hereto as Schedule V), reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations or the financial condition of Borrower. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any Provided Information or representation or warranty made herein to be materially misleading.

4.1.35 Investment Company Act. Borrower is not (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.36 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable have been derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.1.37 Principal Place of Business; State of Organization. Borrower’s principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. The Borrower is organized under the laws of the State of Delaware.

4.1.38 Intentionally Omitted.

4.1.39 Mortgage Taxes. As of the date hereof, Borrower represents that it has paid all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

4.1.40 Zoning; Building Permits. The Project Improvements can be developed and constructed in accordance with the Plans and Specifications “as of right” without requiring the issuance of any zoning variance or other discretionary permit and/or approval. Borrower has obtain all building permits and other Governmental Approvals required for the construction of the Project Improvements.

4.1.41 *Intentionally Omitted.*

4.1.42 *Single Purpose; Borrower's Prior Acts.* Borrower hereby represents and warrants to Lender that:

(a) Since its formation, Borrower has not owned any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property.

(b) Since its formation, Borrower has not engaged in any business other than the ownership, management and operation of the Property and Borrower has conducted and operated its business as presently conducted and operated.

(c) Since its formation, Borrower has not entered into any contract or agreement with any of its Affiliates, any of its constituent parties or any Affiliate of any constituent party, except those (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are substantially similar to those that would be obtained in a comparable arm's-length transaction with an unrelated third party, and (ii) in connection with this Agreement.

(d) Since its formation, Borrower has not incurred any Indebtedness.

(e) Since its formation, Borrower has not made any loans to any Person or held evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity).

(f) Since its formation, Borrower has remained solvent and has paid its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its own assets and generally as the same have become due.

(g) Since its formation, Borrower, has done or caused to be done all things necessary to observe its respective organizational formalities applicable to a business entity of its type and to preserve their respective existence or has promptly taken curative action with respect thereto.

(h) Since its formation, (i) Borrower has maintained all of its respective accounts (including bank accounts), books and records separate from those of its Affiliates and any constituent party; (ii) Borrower has maintained separate financial statements and its respective assets have not been listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity; (iii) Borrower has filed its own tax returns and has not filed a consolidated federal income tax return with any other Person, except to the extent that Borrower was required to file consolidated tax returns by law; and (iv) Borrower has maintained books, records, resolutions and agreements as official records.

(i) Since its formation, Borrower has been, and at all times has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person, except for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in **Subsection (h)** above, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower, has conducted business in its own name; has not identified itself or any of its Affiliates as a division or part of the other; and has used separate stationery, invoices and checks bearing its own name and not the name of any Affiliate.

(j) Since its formation, Borrower has maintained adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Since its formation, neither Borrower has, nor have any of its constituent parties, have sought or effected the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

(l) Since its formation, Borrower has not commingled its funds or other assets with those of any Affiliate or constituent party or any other Person, and Borrower, has held all of its assets in its own name.

(m) Since its formation, Borrower has maintained its assets in such a manner that it would not be costly or difficult to segregate, ascertain or identify their respective individual assets from those of any Affiliate or constituent party or any other Person.

(n) Since its formation, Borrower has not guaranteed or become obligated for the debts of any other Person and has not held itself out to be responsible for or to have their respective credit available to satisfy the debts or obligations of any other Person.

(o) Borrower is presently conducting its business so that the assumptions made with respect to Borrower in the Insolvency Opinion are currently true and correct in all material respects.

(p) Since its formation, Borrower has not permitted any Affiliate or constituent party independent access to its bank accounts.

(q) Since its formation, Borrower has paid the salaries of its own employees (if any) from its own funds and has maintained a sufficient number of employees (if any) in light of their respective contemplated business operations.

(r) Since its formation, Borrower has compensated each of its consultants and agents from its own funds for services provided to it and pay from its own respective assets all obligations of any kind incurred.

(s) Since its date of formation, Borrower has not acquired any obligations or securities of any of its Affiliates.

(t) Since the date of its formation, Borrower has not acquired or held any interest in or formed any entity or subsidiary.

4.1.43 *Cash Management Account*. Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code of the State of Delaware) in the Clearing Account and Cash Management Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed the Clearing Account and Cash Management Account;

(b) Each of the Clearing Account and Cash Management Account constitutes a “deposit account” within the meaning of the Uniform Commercial Code of the State of Delaware;

(c) Pursuant and subject to the terms hereof, the Clearing Bank and the Cash Management Bank have agreed to comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of the Clearing Account and Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

(d) The Clearing Account and Cash Management Account are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to the Clearing Bank and the Cash Management Bank complying with instructions with respect to the Clearing Account and Cash Management Account from any Person other than Lender.

4.1.44 *Trade Name; Other Intellectual Property*. Borrower owns and possesses or licenses (as the case may be) all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, websites, domain names and copyrights, as Borrower considers necessary for the conduct of its business as now conducted without, individually or in the aggregate, any infringement upon rights of other Persons, in each case except as could not reasonably be expected to (i) materially and adversely affect the value of the Property, (ii) impair the use and operation of the Property or (iii) impair Borrower’s ability to pay its obligations in a timely manner, and there is no individual patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right or copyright the loss of which would (i) materially and adversely affect the value of the Property, (ii) impair the use and operation of the Property or (iii) impair Borrower’s ability to pay its obligations in a timely manner (collectively, the “**Intellectual Property**”).

4.1.45 General Contractor's Agreement. As of the date hereof, (i) the General Contractor's Agreement is in full force and effect; (ii) Borrower and General Contractor are in full compliance with their respective obligations under the General Contractor's Agreement; (iii) the work to be performed by General Contractor under the General Contractor's Agreement is the work called for by the Plans and Specifications; and (iv) all work on the Project Improvements heretofore completed has been completed in accordance with the Plans and Specifications in a good and workmanlike manner and is free of any defects. Borrower shall from time to time, upon request by Lender, cause General Contractor to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

4.1.46 Architect's Contract. As of the date hereof, (i) the Architect's Contract is in full force and effect; (ii) both Borrower and, to the best of Borrower's knowledge, Borrower's Architect are in compliance in all material respects with their respective obligations under the Architect's Contract; (iii) the work to be performed by Borrower's Architect under the Architect's Contract is the architectural services required to design the Project Improvements to be built in accordance with the Plans and Specifications and all architectural services required to complete the Project Improvements in accordance with the Plans and Specifications is provided for under the Architect's Contract; and (iv) all work on the Project Improvements heretofore completed has been completed in accordance with the Plans and Specifications in a good and workmanlike manner and is free of any defects. Upon request by Lender, Borrower shall or Borrower shall cause Borrower's Architect to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

4.1.47 Plans and Specifications. As of the date hereof, Borrower has furnished Lender true and complete sets of the Plans and Specifications. The Plans and Specifications comply with all applicable Legal Requirements, all Governmental Approvals, and all restrictions, covenants and easements affecting the Property, and have been approved by each such Governmental Authority as is required for construction and renovation of the Project Improvements and the General Contractor, Guarantor, Borrower's Architect, Lender and the Construction Consultant.

4.1.48 Budget. The Development Budget accurately reflects all anticipated Project-Related Costs. Upon the making of the Advances requested in Borrower's Requisition in the manner set forth therein, all materials and labor therefore supplied or performed in connection with the Property will have been paid for in full (subject to the Retainage).

4.1.49 Feasibility. Each of the Construction Schedule and the Disbursement Schedule is accurate.

Section 4.2 **Survival of Representations**. Borrower agrees that all of the representations and warranties of Borrower set forth in **Section 4.1** hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other

Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V.

BORROWER COVENANTS

Section 5.1 **Affirmative Covenants**. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

5.1.1 **Existence; Compliance with Legal Requirements**. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall never permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Mortgage. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (vi) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable

judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 *Taxes and Other Charges.* Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of **Section 7.1** hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to **Section 7.1** hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (vi) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

5.1.3 *Litigation.* Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower and/or Guarantor which, might materially adversely affect Borrower's or Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 *Access to Property.* Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice and subject to the rights of Tenants under Leases.

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any material adverse change in Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.6 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and reasonable expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.8 Award and Insurance Benefits. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) out of such Insurance Proceeds.

5.1.9 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of Borrower under the Loan Documents, as Lender may reasonably require including, without limitation, the execution and delivery of all such writings necessary to transfer any licenses with respect to the Property into the name of Lender or its designee after the occurrence of an Event of Default; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

5.1.10 Principal Place of Business, State of Organization. Borrower will not cause or permit any change to be made in its name, identity (including its trade name or names), place of organization or formation (as set forth in **Section 4.1.36** hereof) or Borrower's corporate or partnership structure unless Borrower shall have first notified Lender in writing of such

change at least thirty (30) days prior to the effective date of such change, and shall have first taken all reasonable action required by Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement, the Cash Management Agreement and the other Loan Documents and, in the case of a change in Borrower's structure, without first obtaining the prior consent of Lender. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in the introductory paragraph of this Agreement. Borrower shall promptly notify Lender of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

5.1.11 *Financial Reporting*.

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire at Lender's expense unless an Event of Default shall have occurred. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's interest. Upon Lender's reasonable request, Borrower shall deliver to Lender such other information necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's annual financial statements covering the Property for such Fiscal Year audited by a "**Big Four**" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual Net Cash Flow, Net Operating Income, Gross Income from Operations and Operating Expenses. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income

and expenses for the prior Fiscal Year, (ii) an Officer's Certificate stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Property being reported upon and has been prepared in accordance with GAAP; (iii) a list of tenants, if any, occupying more than twenty percent (20%) of the total floor area of the Improvements, (iv) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and cumulative basis, and (v) a schedule audited by such independent certified public accountant reconciling Net Operating Income to Net Cash Flow (the "**Net Cash Flow Schedule**"), which shall itemize all adjustments made to Net Operating Income to arrive at Net Cash Flow deemed material by such independent certified public accountant. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month throughout the term of the Loan the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: monthly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar month, noting all Net Operating Income, Gross Income from Operations and Operating Expenses (not including any contributions to the Reserve Funds) and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing (i) a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, for any individual items in excess of \$10,000, all in form satisfactory to Lender, (ii) a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month accompanied by an Officers' Certificate with respect thereto; and (iii) a Net Cash Flow Schedule. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in **Section 4.1.30** and **Section 4.1.35** are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than sixty (60) days.

(d) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month throughout the term of the Loan, an rent roll for the subject month, accompanied by an Officer's Certificate stating that such rent roll is true, correct, accurate, and complete and fairly presents the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable.

(e) For the partial year period commencing on the date of the Closing Date, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such period or Fiscal Year in form

reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval (each such Annual Budget, an "**Approved Annual Budget**"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recent Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges.

(f) In the event that, Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an "**Extraordinary Expense**"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval, except in the case of emergency (provided that Borrower will notify Lender promptly after such emergency).

(g) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this Section 5.1.11 in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12 *Business and Operations*. Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of all relevant jurisdictions as and to the extent the same are required for the ownership, maintenance, management and operation of the Property. Borrower shall at all times during the term of the Loan, continue to own and/or maintain all of the Equipment, Fixtures and Personal Property which are necessary to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

5.1.13 *Title to the Property*. Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Mortgage and the Assignment of Leases on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 Costs of Enforcement. In the event (a) that the Mortgage encumbering the Property is foreclosed in whole or in part or that the Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering the Property prior to or subsequent to the Mortgage in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 Estoppel Statement.

(a) After written request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Agreement, the Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall deliver to Lender upon written request, tenant estoppel certificates from each tenant paying base rent in an amount equal to or exceeding five percent (5%) of the Gross Income from Operations from the Property occupied by such tenant in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After written request by Borrower, Lender shall within ten (10) days furnish Borrower with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, and (iv) the date installments of interest and/or principal were last paid.

5.1.16 Loan Proceeds . Borrower shall use the proceeds of the Loan solely and exclusively for the purposes of constructing and renovating the Project Improvements in accordance herewith and in accordance with the Building Loan Budget which shall be subject to no change except as permitted hereby. Borrower will receive the Advances to be made hereunder and will hold the right to receive the same as a trust fund for the purpose of paying the Costs of the Improvement and it will apply the same first to such payment before using any part thereof for any other purpose.

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.18 Confirmation of Representations. Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower and Guarantor as of the date of the Securitization.

5.1.19 Intentionally Omitted.

5.1.20 Leasing Matters. Borrower may not enter into a Lease, license or other occupancy agreement for any portion of the Property without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that after the Property shall have achieved the Required Ratios at Completion, Borrower shall not be required to obtain Lender's approval of Leases for less than 15,000 square feet that otherwise satisfy the requirements of this Agreement. Upon request, Borrower shall furnish Lender with executed copies of all Leases. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates. All proposed Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Lender's rights under the Loan Documents. All Leases executed after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved except that no termination by Borrower or acceptance of surrender by a tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Lease will be permitted without the written consent of Lender, provided, further, that after the Property shall have achieved the Required Ratios at Completion, Borrower shall not be required to obtain Lender's approval for termination of Leases for less than 15,000 square feet that otherwise satisfy the requirements of this Agreement; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents without Lender's prior written consent which shall not be unreasonably withheld; and (vi) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, Borrower shall not enter into a lease of all or substantially all of the Property without Lender's prior written consent.

5.1.21 Alterations.

(a) Following the Completion of the Improvements, Borrower shall obtain Lender's prior written consent to any subsequent alterations to any Improvements, which consent shall not be unreasonably withheld or delayed except with respect to alterations that may have a

material adverse effect on Borrower's financial condition or the value of the Property or the Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with (i) any alterations that will not have a material adverse effect on Borrower's financial condition or the value of the Property or the Net Operating Income, and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (ii) alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement. If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "**Threshold Amount**"), Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization or (D) a completion and performance bond or (E) a Letter of Credit. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and Lender may apply such security from time to time at the option of Lender to pay for such alterations.

(b) Notwithstanding anything contained herein to the contrary, the construction, Building Loan and alteration of the Improvements in accordance with the Plans and Specifications shall not constitute "alterations" to the Improvements and will not be subject to the terms of this **Section 5.1.21**.

5.1.22 No Fees or Payments to Affiliates. In no event shall Borrower pay any fees or make any payments to any Affiliates without Lender's approval, which may be withheld in its sole discretion.

5.1.23 Payment of Administration Fee. Borrower shall pay to Lender on the first (1st) day of each calendar month the Administration Fee in advance.

5.1.24 General Contractor's Agreement. Borrower shall (a) enforce the General Contractor's Agreement in the best interests of the Improvements using sound business judgment, (b) waive none of the material obligations of any of the parties thereunder, (c) do no act which would relieve the General Contractor from its material obligations to construct the Project Improvements according to the Plans and Specifications, (d) make no amendments to or change orders under the General Contractor's Agreement, except as permitted under this Agreement, without the prior approval of Lender, (e) ensure that the work to be performed by General Contractor under the General Contractor's Agreement is the work called for by the Plans and Specifications, and (f) ensure that all work on the Improvements shall be completed in accordance with the Plans and Specifications in a good and workmanlike manner and shall be free of any defects. Borrower shall from time to time, upon request by Lender, use reasonable efforts to cause General Contractor to provide Lender with reports in regard to the status of

construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

5.1.25 Architect's Contract. Borrower shall enforce the Architect's Contract in the best interests of Borrower consistent with the construction of the Project Improvements using sound business judgment, (b) waive none of the material obligations of Borrower's Architect thereunder, (c) do no act which would relieve Borrower's Architect from its material obligations under the Architect's Contract and (d) make no amendments to the Architect's Contract without the prior approval of Lender. Upon request by Lender, Borrower shall cause Borrower's Architect to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

5.1.26 Building Loan Costs and Expenses. Borrower shall promptly pay when due all Building Loan Costs.

5.1.27 Fees. Borrower shall pay when due the reasonable fees of the Construction Consultant, all reasonable costs and expenses, including, without limitation, appraisal fees (only if required by law after the initial appraisal) recording fees and charges, abstract fees, title policy fees, escrow fees, reasonable attorneys' fees, fees of inspecting architects and engineers to the extent provided hereunder in connection with Advances, fees of environmental consultants to the extent provided in the Mortgage, and all other reasonable and customary costs and expenses which have been incurred or which may hereafter be incurred by Lender in connection with the preparation and execution of the Loan Documents, including any extension, amendment or modification thereof; the funding of the Loan, the administration and enforcement of this Agreement, the Mortgage, the Note, and the other Loan Documents, including, without limitation, reasonable attorneys' fees in any action for the foreclosure of the Mortgage and the collection of the Loan, and all such fees incurred in connection with any bankruptcy or insolvency proceeding; and Borrower will, within twenty (20) days after demand by Lender, reimburse Lender for all such expenses which have been incurred; and Borrower will indemnify and hold harmless Lender from and against, and reimburse it for all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against Lender or Borrower on account of any act performed or omitted to be performed hereunder by Borrower or on account of any transaction arising out of or in any way connected with the Property, or with this Agreement or any of the indebtedness evidenced by the Note, provided that the foregoing indemnity shall not apply to any such liabilities, losses, damages and expenses of Lender to the extent arising from the willful misconduct or gross negligence of Lender. All amounts incurred or paid by Lender under this **Section 5.1.27**, together with interest thereon at the Default Rate from the due date until paid by Borrower, shall be added to the Debt and shall be secured by the lien of the Mortgage.

5.1.28 Completion of Construction.

(a) Borrower shall cause the Project Improvements to be constructed in accordance with the Plans and Specifications and any Permitted Encumbrance and in full

compliance with the Building Loan Budget, as the same may be amended from time to time in accordance with the terms hereof.

(b) Borrower shall cause the Completion of the Improvements to occur on or before the Required Completion Date.

(c) Borrower shall diligently pursue construction of the entire Project Improvements to cause the Complete of the Improvements and obtain a temporary or permanent certificate of occupancy (and to the extent the same are conditional or require performance by Borrower, satisfy all conditions to the issuance of and/or performed all obligations required for the continued validity of the same) for the Property on or prior to the Required Completion Date, in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Property, all applicable Legal Requirements, and all Governmental Approvals, and with all terms and conditions of the Loan Documents; pay all sums and to perform such duties as may be necessary to complete such construction of the Project Improvements substantially in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Property, all Legal Requirements and all Governmental Approvals, and with all terms and conditions of the Loan Documents, all of which shall be accomplished on or before the Required Completion Date, free from any liens, claims or assessments (actual or contingent) asserted against the Property for any material, labor or other items furnished in connection therewith unless bonded and removed as a Lien on the Property. The renovation of the Project Improvements shall include all work necessary to put the Property in conformity with, and eliminate any breaches from, the ADA. Evidence of satisfactory compliance with all of the foregoing shall be furnished by Borrower to Lender on or before the Required Completion Date. In addition, if such certificate of occupancy or other Governmental Approvals are temporary in nature, Borrower shall diligently pursue procuring final Governmental Approvals. In addition, Borrower shall diligently pursue construction of the entire Project Improvements to Final Completion after the Required Completion Date.

(d) If at any time prior to the Completion of the Improvements and satisfaction of the conditions to the Final Advance Lender determines in its sole discretion that the undrawn funds then available under the Interest Reserve Line Item of the Project Loan Budget and the amount of Interest Reserve Funds on deposit with Lender is insufficient to pay the Debt Service on the Loan, then, Borrower shall deposit with Lender, on demand, either (i) an amount reasonably determined by Lender to pay interest on the Loan as it comes due prior to the Completion of the Improvements and the satisfaction of the conditions to the Final Advance (the “**Additional Interest Reserve Deposit**”), or (ii) a Letter of Credit in such amount (the “**Additional Interest Reserve Letter of Credit**”). In determining the amount of the Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit, Lender will consider, among other things, (i) the degree of completion of the Improvements on such date, and (ii) the amount, if any, of undrawn funds then available under the Interest Reserve Line Item of the Project Loan Budget. In addition, and subject to the applicable terms hereof and the applicable terms of the Project Loan Agreement regarding the re-allocation of Line Items, Lender shall not unreasonably withhold its consent to Borrower’s request at the time of the deposit of the Additional Interest Reserve Deposit or the Additional Interest Reserve Letter of Credit to re-allocate a portion of the then undrawn Contingency Line Item (or any other Line Item within the

Building Loan Budget) from the Project Loan Budget to the Interest Reserve Line Item of the Project Loan Budget, provided, however, under no circumstances may any portion of the Contingency Line Item of the Building Loan Budget be reallocated to the Interest Reserve Line Item. The Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit shall be a Reserve Fund for all purposes hereunder. Lender shall apply the Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit in accordance with Section 7.2 hereof.

5.1.29 Inspection of Property. Borrower shall permit Lender, the Construction Consultant and their respective representatives, to enter upon the Property, inspect the Project Improvements and all materials to be used in the construction and Building Loan thereof and to examine the Plans and Specifications which are or may be kept at the construction site and will cooperate, and cause the General Contractor, the Major Contractors and the Major Subcontractors to cooperate with the Construction Consultant to enable him or her to perform his or her functions hereunder.

5.1.30 Construction Consultant. Borrower acknowledges that (i) the Construction Consultant has been retained by Lender to act as a consultant and only as a consultant to Lender in connection with the construction of the Project Improvements and has no duty to Borrower, (ii) the Construction Consultant shall in no event have any power or authority to give any approval or consent or to do any other act or thing which is binding upon Lender, (iii) Lender reserves the right to make any and all decisions required to be made by Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender under this Agreement and to accept or not accept any matter or thing required to be accepted by Lender under this Agreement, and without being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by the Construction Consultant with respect thereto, (iv) Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by the Construction Consultant to Lender or any other person or party, and (v) Lender reserves the right to replace the Construction Consultant with another construction consultant at any time and without prior notice to or approval by Borrower.

5.1.31 Construction Consultant/Duties and Access. Borrower shall permit Lender to retain the Construction Consultant at the reasonable cost of Borrower to perform the following services on behalf of Lender:

- (a) Prepare the Final Project Report;
- (b) To review and advise Lender whether, in the opinion of the Construction Consultant, the Plans and Specifications are satisfactory;
- (c) To review Draw Requests and change orders; and
- (d) To make periodic inspections in accordance with Section 5.1.29 (approximately at the date of each Draw Request) for the purpose of assuring that construction of

the Project Improvements to date is in accordance with the Plans and Specifications and to approve Borrower's then current Draw Request as being consistent with Borrower's Obligations under this Agreement.

The fees of the Construction Consultant shall be paid by Borrower within thirty (30) days after billing therefor and expenses incurred by Lender on account thereof shall be reimbursed to Lender within thirty (30) days after request therefor, but neither Lender nor the Construction Consultant shall have any liability to Borrower on account of (i) the services performed by the Construction Consultant, (ii) any neglect or failure on the part of the Construction Consultant to properly perform its services or (iii) any approval by the Construction Consultant of construction of the Project Improvements. Neither Lender nor the Construction Consultant assumes any obligation to Borrower or any other Person concerning the quality of construction of the Project Improvements or the absence therefrom of defects.

5.1.32 Correction of Defects. Borrower shall promptly correct all material defects in the Project Improvements or any material departure from the Plans and Specifications not previously approved by Lender to the extent required hereunder. Borrower agrees that the advance of any proceeds of the Loan whether before or after such defects or departures from the Plans and Specifications are discovered by, or brought to the attention of, Lender shall not constitute a waiver of Lender's right to require compliance with this covenant.

5.1.33 Approval of Change Orders; Cost Savings. Borrower shall permit no deviations from the Plans and Specifications during construction without the prior approval of Lender; provided, however, that Borrower may make changes without Lender's prior written approval so long as (a) with respect to any Major Contract or Major Subcontract, such changes do not exceed two percent (2%) of the amount of the applicable contract, (b) such changes do not exceed in the aggregate \$250,000.00, provided that changes which have been approved by Lender either before or after such changes have been made shall be disregarded in calculating said \$250,000.00 threshold, (c) such changes do not cause any line item in the Building Loan Budget to be exceeded (after taking into account use of the Contingency Reserve to the extent permitted under Section 2.1.7, reallocations under this Section 5.1.33 and other reallocations approved by Lender in its sole discretion), (d) Borrower uses reasonable efforts to deliver to Lender and Construction Consultant prior notice of such change orders or, if Borrower is unable to deliver prior notice, Borrower shall submit to Lender and Construction Consultant copies of all change orders entered into with respect to the Project Improvements within fifteen (15) days after the same are entered into, irrespective of whether the same require the prior approval of Lender and Construction Consultant pursuant to this Agreement, (e) such changes will not materially change the gross square feet or the net rentable square feet of commercial space to be contained in the Improvements, or the basic layout of the Improvements, or involve the use of materials, furniture, fixtures and equipment that will not be at least equal in quality to the materials, furniture, fixtures and equipment originally specified in or required by the approved Plans and Specifications, and (f) such change will not prevent Borrower from completing the Project Improvements by the Required Completion Date. The foregoing to the contrary notwithstanding, Borrower may allocate cost savings actually achieved and verifiable in any line item of the Building Loan Budget to other line items of the Building Loan Budget, provided that if such costs savings are being allocated from a line item of the Building Loan Budget, (i) such Building Loan Budget line item has a firm contract or sub-contract in place, (ii) the work has

commenced and is proceeding in accordance with the Construction Schedule and (iii) the Construction Consultant is satisfied with said contract or sub-contract, including, without limitation, with regard to the scope of said contract or sub-contract.

5.1.34 Intentionally Omitted.

5.1.35 Easements and Restrictions; Zoning. Borrower shall submit to Lender for Lender's approval prior to the execution thereof by Borrower all proposed easements, restrictions, covenants, permits, licenses, and other instruments which would affect the title to the Property, accompanied by a Survey showing the exact proposed location thereof and such other information as Lender shall reasonably require. Borrower shall not subject the Property or any part thereof to any easement, restriction or covenant (including any restriction or exclusive use provision in any lease or other occupancy agreement) without the prior approval of Lender (not to be unreasonably withheld or delayed in the case of utility easements only). Notwithstanding the foregoing, Lender shall consent to a reciprocal easement agreement in connection with the future development of the adjacent development site provided that such reciprocal easement agreement is reasonably acceptable to Lender. With respect to any and all existing easements, restrictions, covenants or operating agreements which benefit or burden the Property and any easement, restriction or covenant to which the Property may hereafter be subjected in accordance with the provisions hereof, Borrower shall: (a) observe and perform in all material respects the obligations imposed upon Borrower or the Property; (b) not alter, modify or change the same in any material respect without the prior approval of Lender; (c) enforce its rights thereunder in a commercially reasonable manner so as to preserve for the benefit of the Property the full benefits of the same; and (d) deliver to Lender a copy of any notice of default or other material notice received by Borrower in respect of the same promptly after Borrower's receipt of such notice.

5.1.36 Laborers, Subcontractors and Materialmen. Borrower shall notify Lender promptly, and in writing, if Borrower receives any default notice, notice of lien or demand for past due payment, written or oral, from any laborer, subcontractor or materialmen. Borrower will also furnish to Lender at any time and from time to time upon reasonable demand by Lender, lien waivers in form reasonably satisfactory to Lender bearing a then current date from the Major Contractors and the Major Subcontractors.

5.1.37 Ownership of Personalty. Borrower shall furnish to Lender, if Lender so requests, photocopies of the fully executed contracts, bills of sale, receipted vouchers and agreements, or any of them, under which Borrower claims title to the materials, articles, fixtures and other personal property used or to be used in the construction or operation of the Improvements.

5.1.38 Comply with Other Loan Documents. Borrower shall perform all of Borrower's Obligations under the Note and the other Loan Documents.

5.1.39 Purchase of Material Under Conditional Sale Contract. Borrower shall not permit any materials, equipment, fixtures or any other part of the Improvements to be purchased or installed under any security agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider

them personal property after their incorporation in the Property, unless authorized by Lender in writing and in advance.

5.1.40 *Further Assurance of Title*. If at any time Lender has reason to believe in its reasonable opinion that any Advance is not secured or will or may not be secured by the Mortgage as a first priority lien or security interest on the Improvements (subject only to the Permitted Encumbrances and the Loan Documents), then Borrower shall, within ten (10) days after written notice from Lender, do all things and matters necessary (including execution and delivery to Lender of all further documents and performance of all other acts which Lender reasonably deems necessary or appropriate) to assure to the reasonable satisfaction of Lender that any Advance previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first priority lien or security interest with respect to the Improvements (subject only to the Permitted Encumbrances and the Loan Documents). Lender, at Lender's option, may decline to make further Advances hereunder until Lender has received such assurance.

5.1.41 *Management Agreement*.

(a) From and after Final Completion, Borrower shall cause the Property to be operated, in all material respects, in accordance with the Management Agreement (or Replacement Management Agreement, as applicable). In the event that the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Management Agreement with Manager or another Qualified Manager, as applicable.

(b) Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (iv) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner.

(c) If: (a) an Event of Default shall have occurred and be continuing, (b) Manager shall become bankrupt or insolvent; (c) a default beyond any applicable notice and/or cure period, if any, occurs under the Management Agreement, or (d) following the Completion of the Improvements, the Debt Service Coverage Ratio (based upon the trailing six (6) month period, annualized) as of any Debt Service Coverage Determination Date is less than 1.05 to 1.00, then, in any such event, Borrower shall, at the request of Lender, terminate the Management Agreement and replace the Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

5.1.42 *Embargoed Person*. Borrower has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA PATRIOT Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Principal or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure.

5.1.43 *Ground Lease*. (a) Borrower shall, at its sole cost and expense, promptly and timely perform and observe all the material terms, covenants and conditions required to be performed and observed by Borrower as lessee under the Ground Lease (including, but not limited to, the payment of all rent, additional rent, percentage rent and other charges required to be paid under the Ground Lease).

(b) If Borrower shall be in default under the Ground Lease, then, subject to the terms of the Ground Lease, Borrower shall grant Lender the right (but not the obligation), to cause the default or defaults under the Ground Lease to be remedied and otherwise exercise any and all rights of Borrower under the Ground Lease, as may be necessary to prevent or cure any default provided such actions are necessary to protect Lender’s interest under the Loan Documents, and Lender shall have the right to enter all or any portion of the Ground Lease Property at such times and in such manner as Lender deems necessary, to prevent or to cure any such default.

(c) The actions or payments of Lender to cure any default by Borrower under the Ground Lease shall not remove or waive, as between Borrower and Lender, the default that occurred under this Agreement by virtue of the default by Borrower under the Ground Lease. All sums expended by Lender to cure any such default shall be paid by Borrower to Lender, upon demand, with interest on such sum at the rate set forth in this Agreement from the date such sum is expended to and including the date the reimbursement payment is made to Lender. All such indebtedness shall be deemed to be secured by the Mortgage.

(d) Borrower shall notify Lender promptly in writing of the occurrence of any material default by the Ground Lessor under the Ground Lease or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a material default by

the Ground Lessor under the Ground Lease, and the receipt by Borrower of any notice (written or otherwise) from the Ground Lessor under the Ground Lease noting or claiming the occurrence of any default by Borrower under the Ground Lease or the occurrence of any event that, with the passage of time or service of notice, or both, would constitute a default by Borrower under the Ground Lease. Borrower shall promptly deliver to Lender a copy of any such written notice of default.

(e) Within ten (10) days after receipt of written demand by Lender, Borrower shall use reasonable efforts to obtain from the Ground Lessor under the Ground Lease and furnish to Lender the estoppel certificate of the Ground Lessor stating the date through which rent has been paid and whether or not there are any defaults thereunder and specifying the nature of such claimed defaults, if any.

(f) Borrower shall promptly execute, acknowledge and deliver to Lender such instruments as may reasonably be required to permit Lender to cure any default under the Ground Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve the security interest of Lender under the Loan Documents with respect to the Ground Lease Property. Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Borrower under or with respect to the Ground Lease, including, without limitation, the right to effectuate any extension or renewal of the Ground Lease, or to preserve any rights of Borrower whatsoever in respect of any part of the Ground Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(g) Notwithstanding anything to the contrary contained in this Agreement with respect to the Ground Lease:

(i) The lien of the Mortgage attaches to all of Borrower's rights and remedies at any time arising under or pursuant to Subsection 365(h) of the Bankruptcy Code, including, without limitation, all of Borrower's rights, as debtor, to remain in possession of the related Ground Lease Property.

(ii) Borrower shall not, without Lender's written consent, elect to treat the Ground Lease as terminated under subsection 365(h)(1) of the Bankruptcy Code. Any such election made without Lender's prior written consent shall be void.

(iii) As security for the Debt, Borrower unconditionally assigns, transfers and sets over to Lender all of Borrower's claims and rights to the payment of damages arising from any rejection by the Ground Lessor under the Ground Lease under the Bankruptcy Code. Lender and Borrower shall proceed jointly or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents in any case in respect of Ground Lessor under the Bankruptcy Code. This assignment constitutes a

present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Debt shall have been satisfied and discharged in full. Any amounts received by Lender or Borrower as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied to all costs and expenses of Lender (including, without limitation, attorney's fees and costs) incurred in connection with the exercise of any of its rights or remedies in accordance with the applicable provisions of this Agreement.

(iv) If, pursuant to subsection 365(h) of the Bankruptcy Code, Borrower seeks to offset, against the rent reserved in the Ground Lease, the amount of any damages caused by the nonperformance by Ground Lessor of any of its obligations thereunder after the rejection by Ground Lessor of the Ground Lease under the Bankruptcy Code, then Borrower shall not effect any offset of the amounts so objected to by Lender. If Lender has failed to object as aforesaid within ten (10) days after notice from Borrower in accordance with the first sentence of this subsection, Borrower may proceed to offset the amounts set forth in Borrower's notice.

(v) If any action, proceeding, motion or notice shall be commenced or filed in respect of Ground Lessor of all or any part of the Property in connection with any case under the Bankruptcy Code, Lender and Borrower shall cooperatively conduct and control any such litigation with counsel agreed upon between Borrower and Lender in connection with such litigation. Borrower shall, upon demand, pay to Lender all costs and expenses (including reasonable attorneys' fees and costs) actually paid or actually incurred by Lender in connection with the cooperative prosecution or conduct of any such proceedings. All such costs and expenses shall be secured by the lien of the related Mortgage.

(vi) Borrower shall promptly, after obtaining knowledge of such filing notify Lender orally of any filing by or against Ground Lessor under the Ground Lease of a petition under the Bankruptcy Code. Borrower shall thereafter promptly give written notice of such filing to Lender, setting forth any information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought in such filing. Borrower shall promptly deliver to Lender any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating to such petition.

5.1.44 *Storage Facility Master Lease*. (a) Borrower has entered into a Sublease Agreement dated December 10, 2007 (the "**Storage Facility Master Lease**") with Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company (the "**Storage Facility Tenant**") for the approximately 88,127 square foot self storage facility to be constructed at the Property (the "**Self Storage Facility**") which Storage Facility Master Lease (i) provides for the payment of an annual base rent of \$800,000 per annum (the "**Storage Facility Rent**") (payable in equal monthly installments), (b) has a term expiring no earlier than December 1, 2024, and (c) is otherwise in form and substance satisfactory to Lender. Borrower hereby assigns to Lender all

of its right title and interest in the Storage Facility Master Lease and the guaranty thereto as additional security for the Loan.

(b) The Storage Facility Master Lease is in full force and effect and there are no uncured defaults thereunder by either party and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. The copy of the Storage Facility Master Lease delivered to Lender is true and complete, and there are no oral agreements with respect thereto.

(c) Borrower shall give to Lender copies of all notices given to Borrower or received by Borrower with respect to the Storage Facility Master Lease. Borrower shall not (i) waive any rights under the Storage Facility Master Lease, (ii) modify the Rent or other amounts payable under the Storage Facility Master Lease, or extend any period for the payment of rent or other amounts under the Storage Facility Master Lease, or (iii) terminate, cancel accept a surrender (except as specifically provided in **Section 5.1.44(d)** hereof) of or otherwise amend or modify the Storage Facility Master Lease, without, in each case, the prior written consent of Lender, which consent may be granted or withheld by Lender in Lender sole discretion.

(d) Lender will consent to a termination of the Storage Facility Master Lease in the event that (i) the Self Storage Facility is open for business and (ii) either (x) the Self Storage Facility yields an underwritten Net Cash Flow of \$800,000 with no free rent, credit or right of offset, or (y) the entire Property yields a Stabilized Net Cash Flow of \$3,100,000.

(e) Notwithstanding anything to the contrary in the organizational documents of Storage Facility Tenant, Storage Facility Tenant shall not dissolve unless and until each of the following conditions have been satisfied: (i) an appropriate winding down of and disposition of its assets and liabilities, satisfaction of all claims, creditors and liabilities, and retention of adequate reserves to satisfy future contingent liabilities, including, without limitation, its liabilities under the Storage Facility Master Lease; (ii) compliance with all organizational and applicable Legal Requirements relating to dissolution and winding up of Storage Facility Tenant, and (iii) the assignment of the Storage Facility Master Lease to and the assumption thereof by a replacement storage facility tenant acceptable to Lender in its sole discretion and as to which Lender has received a Rating Agency Confirmation.

5.1.45 Home Depot Work. Borrower agrees (i) to complete the Asphalt Binder Work (as defined in the Home Depot Lease) prior to February 1, 2008, (ii) to complete the Site Work (as defined in the Home Depot Lease) prior to April 18, 2008, and (iii) to complete all of Landlord's Work (as defined in the Home Depot Lease) prior to March 18, 2009. Borrower's failure to complete the foregoing work within the time periods required hereunder shall, at Lender's election, be an Event of Default and Lender shall have the right (without prejudice to any other rights of Lender hereunder), but not the obligations, to complete such work and Borrower shall reimburse Lender for any costs and expenses incurred in connection therewith upon demand.

5.1.46 Condominium Provisions.

(a) Condominium Representations and Warranties. Borrower hereby makes the following representations and warranties: (a) no unpaid Condominium Assessments currently exist, or to the best of Borrower's knowledge, are pending and to the best of Borrower's knowledge, no assessments or special assessments are currently contemplated, (b) the Condominium Documents are in full force and effect and Borrower is not in default of any obligation to the Condominium with respect to any of the Condominium Documents and (c) to the best of Borrower's knowledge, the Condominium is in compliance with all state, local or federal laws, rules and regulation applicable to the condominium regime.

(b) Condominium Covenants.

(i) Borrower shall pay all Condominium Assessments, as and when the same become due and payable, subject to any right of Borrower to contest same in accordance with the provisions of the Condominium Documents and provided that Borrower shall exercise any such right if and only if: (i) such proceeding suspends the collection of such Condominium Assessments and the Property will not be in danger of being sold for such unpaid Condominium Assessments, or Borrower has paid all of such Condominium Assessments under protest, (ii) such proceeding is permitted under and is conducted in accordance with the provisions of the Condominium Documents, (iii) if Borrower has not paid the disputed amounts in full under protest, Borrower shall deposit with Lender cash (or other security as may be approved, in writing, by Lender) in an amount Lender deems sufficient to insure the payment of any such Condominium Assessments together with interest and penalties thereon, if any, provided that after a Securitization, one hundred twenty-five percent (125%) of the contested amount (plus anticipated penalty and interest) shall be deposited with Lender, (iv) Borrower furnishes to Lender all other items reasonably requested by Lender and (v) upon a final determination thereof, Borrower promptly pays the amount of any such Condominium Assessments, together with all costs, interest and penalties which may be payable in connection therewith.

(ii) In addition to the financial reporting requirements of **Section 5.1.11** hereof Borrower shall furnish the following to Lender, each prepared in such detail as reasonably required by Lender and certified by a Responsible Officer to be true, complete and correct: as soon as available, but in any event within forty-five (45) days after the end of each fiscal quarter, evidence satisfactory to Lender that all Condominium Assessments for the immediately preceding quarter which are then due and payable for an Individual Property, have been paid by Borrower (or are being duly and properly contested in accordance with Section (a)(1) above) which evidence shall include, without limitation, a true and correct photocopy of Borrower's cancelled check(s) evidencing such payment(s) with respect to such Individual Property provided, however, in lieu of furnishing such evidence to Lender, Borrower shall have the right to deposit cash with Lender in the full annual amount of such Condominium Assessments due with respect to such Individual Property, which deposit shall be held by Lender as additional security for the Loan until such time as satisfactory evidence of such payment in accordance with this clause is accepted by Lender.

(iii) Borrower shall observe and enforce all obligations imposed upon it under the Condominium Documents and shall enforce the terms, covenants and conditions contained in the Condominium Documents to be observed or performed upon the part of the other parties thereunder in a commercially reasonable manner.

(iv) Borrower shall not alter, modify or change the material terms of, nor terminate, any of the Condominium Documents without Lender's consent (which consent shall not be unreasonably withheld, conditioned or delayed).

(v) Borrower shall comply with any such state, local or federal law, rule and regulation applicable to the condominium regime at the Property, the Land or the sale or transfer of the Land, including but not limited to, the securities and condominium laws of the State where the Property is located and the rules and regulations pertaining thereto.

(vi) Borrower shall take all actions as may be necessary from time to time to preserve and maintain the condominium regime at the Property in accordance with the laws of the State where the Property is located.

(vii) Provided that the same was not included in any of the reports, statements, certificates or other documentation submitted to Lender, Borrower shall give Lender prompt notice of any special assessment relating to the condominium regime received by Borrower.

(viii) Borrower shall provide Lender with notice of any proposed additions, alterations or improvements proposed by any Condominium Board costing in excess of \$50,000 and provided that Borrower or its designee has consent rights under the Condominium Documents, Borrower shall not consent to same without Lender's prior approval, not to be unreasonably withheld.

(ix) Borrower shall promptly deliver to Lender a true and complete copy of each and every notice of default received or delivered by Borrower with respect to any obligation of Borrower or any other party under the Condominium Documents.

(x) If an Event of Default has occurred and is continuing, Borrower hereby acknowledges and agrees that, subject to the provisions of the Condominium Documents, Lender (or its nominee) shall be solely entitled to remove any Condominium Board members appointed by Borrower and/or to designate replacement or substitute members of the Condominium Board. If an Event of Default has occurred and is continuing, Lender shall have the right to exercise the power of attorney granted pursuant to the Proxy (as hereinafter defined) to exercise all rights, powers and remedies of Borrower pursuant to the Condominium Documents. The rights granted to Lender under the Proxy shall automatically terminate upon the payment of the Loan in full or upon a defeasance of the Loan in accordance with the terms hereof.

(xi) If an Event of Default has occurred and is continuing, Lender may, at its option, and Borrower hereby grants and assigns to Lender, from and after the occurrence and during the continuation of an Event of Default, the right, either by itself

or by its nominee or designee, in the name of Borrower, to exercise the rights, powers and remedies of Borrower pursuant to the Condominium Documents. Such rights and remedies shall include, without limitation, the right to exercise all voting, consent, managerial and other rights relating to the Condominium, whether in Borrower's name or otherwise, and the right to exercise Borrower's rights in the Condominium, including, without limitation, voting to elect members of the Condominium Board and voting to amend the Condominium Documents.

(c) Additional Event of Default. It shall be an immediate Event of Default hereunder if Borrower violates or does not comply with any of the material provisions of Section **5.1.46(a)** or **(b)** above and/or the Condominium shall become subject to an action for partition and said action has been commenced and not dismissed within thirty (30) days after commencement thereof, or if any provision of the applicable Condominium Act or any section, sentence, clause, phrase or word or the application thereof in any circumstances, is held invalid and such invalidity shall affect the lien of the Security Instrument or the rights of Lender under the Loan Documents.

(d) Additional Defined Terms. As used herein, the following words and phrases shall have the meaning specified below:

"Association" means the Condominium Association of the Property.

"Condominium" means the P/A Acadia Pelham Manor Condominium established pursuant to the Declaration.

"Condominium Assessment" means the Common Charges (as such term is defined in the By-Laws) and all other assessments for common charges against the Property.

"Condominium Board" means the Board of Directors or the Association of an Individual Property.

"Condominium Documents" means, the Declaration, the By-Laws attached thereto, and all other constituent documents establishing or governing the condominium regime at such Individual Property, as the same may be amended from time to time.

"Declaration" means that certain Declaration of P/A-Acadia Pelham Manor Condominium (the "Declaration"), dated September 17, 2007, recorded October 23, 2007 as Document number 472850497 for the creation and establishment of the Condominium with respect to the Property.

"Proxy" shall mean that certain Condominium Proxy, dated as of the date hereof, from Borrower to Lender, pursuant to which Borrower granted Lender a proxy to vote its interest with respect to all matters affecting the Condominium upon the occurrence and during the continuance of an Event of Default and which includes conditional resignations of each of the representatives elected or appointed by Borrower to the Condominium Board.

Section 5.2 Negative Covenants. From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier

release of the Lien of the Mortgage and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 Intentionally Omitted.

5.2.2 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except:

- (i) Permitted Encumbrances;
- (ii) Liens created by or permitted pursuant to the Loan Documents; and
- (iii) Liens for Taxes or Other Charges not yet due.

5.2.3 Dissolution. Borrower shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction in each case, without obtaining the prior written consent of Lender or Lender's designee.

5.2.4 Change In Business. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.5 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.6 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.2.7 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

5.2.8 Ground Lease. (a) Borrower shall not, without Lender's written consent, fail to exercise any option or right to renew or extend the term of the Ground Lease in

accordance with the terms of the Ground Lease, and shall give immediate written notice to Lender and shall execute, acknowledge, deliver and record any document requested by Lender to evidence the Lien of the Mortgage on such extended or renewed lease term; provided, however, Borrower shall not be required to exercise any particular such option or right to renew or extend to the extent Borrower shall have received the prior written consent of Lender (which consent may be withheld by Lender in its sole and absolute discretion) allowing Borrower to forego exercising such option or right to renew or extend. If Borrower shall fail to exercise any such option or right as aforesaid, Lender may exercise the option or right as Borrower's agent and attorney-in-fact as provided above in Lender's own name or in the name of and on behalf of a nominee of Lender, as Lender may determine in the exercise of its sole and absolute discretion.

(b) Borrower shall not waive, excuse, condone or in any way release or discharge Ground Lessor under the Ground Lease of or from Ground Lessor's material obligations, covenant and/or conditions under the Ground Lease without the prior written consent of Lender.

(c) Borrower shall not, without Lender's prior written consent, surrender, terminate, forfeit, or suffer or permit the surrender, termination or forfeiture of, or change, modify or amend in a material or adverse manner, any Ground Lease. Consent to one amendment, change, agreement or modification shall not be deemed to be a waiver of the right to require consent to other, future or successive amendments, changes, agreements or modifications. Any acquisition of lessor's interest in the Ground Lease by Borrower or any Affiliate of Borrower shall be accomplished by Borrower in such a manner so as to avoid a merger of the interests of lessor and lessee in Ground Lease, unless consent to such merger is granted by Lender.

5.2.10 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (A) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Borrower is not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(iii) Borrower qualifies as an “operating company” or a “real estate operating company” within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.2.11 *Transfers.*

(a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower’s ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this **Section 5.2.11**, Borrower shall not, and shall not permit any Restricted Party do any of the following (collectively, a “**Transfer**”): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 5.1.20 and (B) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation’s stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.22 hereof.

(d) Notwithstanding the provisions of this **Section 5.2.11**, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) of the stock, the limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfer shall result in the change of Control in a Restricted Party, and as a condition to each such Transfer, Lender shall receive not less than thirty (30) days prior notice of such proposed Transfer. If after giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in a Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall, no less than thirty (30) days prior to the effective date of any such Transfer, deliver to Lender an Additional Insolvency Opinion acceptable to Lender and the Rating Agencies. In addition, at all times, (a) Guarantor must continue to Control, and own, directly or indirectly, in the aggregate, at least a 51% legal and beneficial interest in, Borrower, and (b) Acadia Realty Trust must continue to Control, and own, directly or indirectly, at least a 20% legal and beneficial interest in, each of Guarantor and any Affiliated Manager.

(e) No consent to any assumption of the Loan shall occur on or before the date that is twelve (12) Payment Dates after the Completion of the Improvements. Thereafter, Lender's consent to a Transfer of the Property and assumption of the Loan shall not be unreasonably withheld provided that Lender receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied for all Transfers other than those described in subsection (d) above:

(i) Borrower shall pay Lender at the time of such Transfer a transfer fee equal to one half of one percent (0.5%) of the outstanding principal balance of the Loan for the first Transfer and one percent (1.0%) of the outstanding principal balance of the Loan for each subsequent Transfer;

(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);

(iii) The proposed transferee (the "**Transferee**") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Property, which expertise shall be reasonably determined by Lender;

(iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate Net Worth and Liquidity reasonably acceptable to Lender;

(v) Transferee, Transferee's Principals and all other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been party to any bankruptcy proceedings,

voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects, including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(viii) Transferee, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in **Sections 4.1.30, 4.1.35, 5.1.46** and **5.2.10** of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements and covenants reasonably required by Lender;

(x) Transferee shall be approved by the Rating Agencies selected by Lender, which approval, if required by Lender, shall take the form of a confirmation in writing from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Borrower or Transferee, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Lender;

(xii) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty of Completion, the Guaranty of Recourse Carveouts and the Environmental Indemnity executed by Guarantor or execute replacement guaranties and environmental indemnity reasonably satisfactory to Lender;

(xiii) Borrower shall deliver, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the

recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the Title Policy issued on the date hereof and the Permitted Encumbrances; and

(xiv) The Property shall be managed by a Qualified Manager pursuant to a Replacement Management Agreement.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Mortgage and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

5.2.12 *No Distributions*. Until Completion of the Improvements and satisfaction of the conditions to the Final Advance, Borrower shall not make any distributions or other disbursements to its partners, shareholders, members or Persons owned by or related to any of its partners, shareholders or members. Borrower shall use any and all Rents collected from the Property to pay operating expenses of and real property taxes on the Property.

5.2.13 *Management Agreement*. Borrower shall not, without Lender's prior written consent (which consent shall not be unreasonably withheld): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower may, without Lender's consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

5.2.14 *Permitted Additional Mezzanine Indebtedness*. Notwithstanding anything the contrary contained in this Agreement, but subject to the rights of Lender to convert a portion of the Loan to a mezzanine loan pursuant to **Section 9.1.2** hereof, an Additional Mezzanine Borrower (as defined below) shall have the right to pledge its direct and/or indirect equity interests in Borrower or Mezzanine Borrower, as applicable (but not of any direct interest in the Property, or Borrower, if there is Subordinate Financing in the form of a mezzanine loan) to a Permitted Mezzanine Lender (as defined below) as security for a loan to such Additional Mezzanine Borrower (an "**Additional Mezzanine Loan**") provided that the following terms and conditions are satisfied:

(a) no Event of Default shall then exist;

(b) Lender shall have received at least thirty (30) and no more than sixty (60) days' prior written notice of the proposed Additional Mezzanine Loan;

(c) the Completion of the Improvements shall have occurred and all of the conditions to the Final Advance shall have been satisfied;

(d) the aggregate amounts of the outstanding principal amount of the Total Debt (calculated without regard to any scheduled amortization paid under the Building Loan or the Project Loan) and the maximum principal amount of the Additional Mezzanine Loan (as of the effective date of the Additional Mezzanine Loan) shall not exceed eighty-five (85%) of the fair market value of the Property as determined by an MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender acting reasonably and dated, or updated, to a date within 30 days of the effective date of the Additional Mezzanine Loan, made in compliance with FIRREA and reasonably satisfactory to Lenders in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error.

(e) the Aggregate Debt Service Coverage Ratio is at least 1.10 to 1.00;

(f) Borrower shall not be obligated to repay the Additional Mezzanine Loan nor incur any obligation or liability to the Permitted Mezzanine Lender or any other Person with respect to the Additional Mezzanine Loan, and the terms and conditions of the Additional Mezzanine Loan, the collateral pledged as security therefor, and the documents evidencing the Additional Mezzanine Loan (the "**Additional Mezzanine Loan Documents**"), shall be reasonably satisfactory to Lender;

(g) a new Single-Purpose Entity shall have been formed that will directly or indirectly own 100% of the Equity Interests in Borrower, or Mezzanine Borrower, as applicable (the "**Additional Mezzanine Borrower**"), the organizational documents of Borrower, Mezzanine Borrower, if any, such Additional Mezzanine Borrower, and their respective constituent owners shall be reasonably satisfactory to Lender, and Borrower, Mezzanine Borrower, if any and such Additional Mezzanine Borrower shall otherwise satisfy all applicable Rating Agency criteria for single-purpose entities, bankruptcy remoteness, and mezzanine borrowers;

(h) the Permitted Mezzanine Lender shall have executed and delivered to Lender a subordination, standstill and intercreditor agreement acceptable to Lender in its sole and absolute discretion, which shall provide among other things that the Permitted Mezzanine Lender shall not have the right to foreclose on its interest in Borrower or Mezzanine Borrower, as applicable, or otherwise exercise its rights under the Additional Mezzanine Loan Documents unless and until the Loan is paid in full and that the Additional Mezzanine Loan shall not be transferable except to a Qualified Transferee;

(i) Borrower and Guarantor shall have executed such additional Loan Documents and such amendments to and reaffirmations of the existing Loan Documents as Lender may require, including entering into a new cash management arrangement with Lender (or modifying any existing cash management requirement) to provide for, among other things, the payment of Lender-approved operating expenses and capital expenses prior to the payment of debt service on the Additional Mezzanine Loan;

(j) Lender shall have received (i) such opinions of counsel to Borrower as Lender may require, in form and content acceptable to Lender (including a new non-consolidation opinion if one was required to be delivered in connection with the Loan); and (ii) confirmation by each of the applicable Rating Agencies that the incurrence of the Additional Mezzanine Loan will not result in any qualification, withdrawal or downgrading of any existing ratings of securities created in any applicable Securitization; and

(k) Borrower shall have paid or reimbursed Lender for all of its costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the foregoing.

Notwithstanding anything herein to the contrary, none of BSCMI, Lender or their respective Affiliates shall have any obligation to provide an Additional Mezzanine Loan or any other financing.

For purposes hereof, the following terms shall have the following respective meanings:

“**Aggregate Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, adjusted for a vacancy rate equal to the greater of the actual vacancy rate, the market vacancy rate and an assumed vacancy rate equal to five percent (5%), without deduction for (i) actual management fees incurred in connection with the operation of the Property less (A) management fees equal to the greater of (1) assumed management fees of four percent (4%) of Gross Income from Operations or (2) the actual management fees incurred, (B) Replacement Reserve Fund contributions equal to \$47,544 per annum; and (C) Rollover Reserve Fund contributions equal to \$187,744 per annum; and
- (b) the denominator is the Total Debt Service for such period assuming a thirty (30) year amortization schedule (and calculated without regard to any scheduled amortization paid under the Building Loan or the Project Loan, or the Subordinate Financing, if applicable), plus all principal and interest payable for such period under the Additional Mezzanine Loan (assuming the Additional Mezzanine Loan had been fully advanced at the beginning of such period) (provided, however, with respect to the Additional Mezzanine Loan, such ratio shall be determined utilizing a debt service constant calculated with the interest rate payable with respect to the Additional Mezzanine Loan and an assumed amortization period of thirty (30) years).

“Permitted Mezzanine Lender” shall mean a Qualified Transferee.

“Qualified Transferee” means (i) BSCMI or an Affiliate of BSCMI, or (ii) one or more of the following:

(A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clause (ii)(A), (ii)(B) or (ii)(E) that satisfies the Eligibility Requirements;

(D) any entity Controlled by, Controlling or under common Control with any of the entities described in clause (i) or clause (ii)(A) or (ii)(C) above or clause (ii)(E) below;

(E) a Qualified Trustee in connection with (aa) a securitization of, or (bb) the creation of collateralized debt obligations (“**CDO**”) secured by, or (cc) a financing through an “owner trust” of, the Mezzanine Loan or any interest therein (any of the foregoing, a “**Securitization Vehicle**”), provided, that (1) one or more classes of securities issued by such Securitization Vehicle is initially rated at least investment grade by each of the Rating Agencies which assigned a rating to one or more classes of securities issued in connection with a Securitization (it being understood that with respect to any Rating Agency that assigned such a rating to the securities issued by such Securitization Vehicle, a Rating Agency Confirmation will not be required in connection with a transfer of the Additional Mezzanine Loan or any interest therein to such Securitization Vehicle, except that if one or more classes of securities issued in connection with a Securitization is rated by Moody’s, the transferee may not rely on this clause (1) with respect to Moody’s); (2) in the case of a Securitization Vehicle that is not a CDO, the special servicer of such Securitization Vehicle has the Required Special Servicer Rating at the time of Transfer and the related transaction documents for such Securitization Vehicle require that any successor have the Required Special Servicer Rating (such entity, an “**Approved Servicer**”) and such Approved Servicer is required to service and administer such Additional Mezzanine Loan or any interest therein in accordance with servicing arrangements for the assets held by the Securitization Vehicle which require that such Approved Servicer act in accordance with a servicing standard notwithstanding any contrary direction or instruction from any other Person; or (3) in the case of a Securitization Vehicle that is a CDO, the CDO Asset Manager and, if applicable, each Intervening Trust Vehicle that is not administered and managed by a

CDO Asset Manager which is a Qualified Transferee, are each a Qualified Transferee under clauses (ii)(A), (B), (C), (D), (F) or (G) of this definition;

(F) an investment fund, limited liability company, limited partnership or general partnership (a “**Permitted Investment Fund**”) where a Permitted Fund Manager acts as general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more of the following: the Mezzanine Lender, a Qualified Transferee, an institutional “accredited investor”, within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, and/or a “qualified institutional buyer” or both within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, provided such institutional “accredited investors” or “qualified institutional buyers” that are used to satisfy the 50% test set forth above in this clause (E) satisfy the financial tests in clause (i) of the definition of Eligibility Requirements; or

(G) any Person for which the Rating Agencies have issued a Rating Agency Confirmation with respect to such Transfer.

“**Eligibility Requirements**” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$650,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or loans similar in type as the Mezzanine Loan or operating commercial mortgage properties.

“**CDO Asset Manager**” with respect to any Securitization Vehicle (hereinafter defined) that is a CDO, shall mean the entity that is responsible for managing or administering the Additional Mezzanine Loan (or any interest therein) as an underlying asset of such Securitization Vehicle or, if applicable, as an asset of any Intervening Trust Vehicle (including, without limitation, the right to exercise any consent and control rights available to the holder of the Additional Mezzanine Loan).

“**Intervening Trust Vehicle**” shall mean with respect to any Securitization Vehicle that is a CDO, a trust vehicle or entity which holds the Additional Mezzanine Loan (or any interest therein) as collateral securing (in whole or in part) any obligation or security held by such Securitization Vehicle as collateral for the CDO.

“**Permitted Fund Manager**” means any Person that on the date of determination is not subject to a Proceeding and is either (i) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, or (ii) an entity that is a Qualified Transferee pursuant to clause (i) or clauses (ii)(A), (B), (C), (D) or (G) of the definition thereof, in each case, which is investing through a fund with committed capital of at least \$250,000,000.

“**Qualified Trustee**” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to

accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two (2) rating categories of S&P and either Fitch or Moody's (provided, however, if the Loan has been securitized, the rating requirement of any agency not a Rating Agency will be disregarded).

“Required Special Servicer Rating” means a special servicer that (i) has a rating of “CSS3” in the case of Fitch, (ii) is on the S&P's select servicer list as a “U.S. Commercial Mortgage Special Servicer” in the case of S&P and (iii) in the case of Moody's, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody's within the twelve (12) month period prior to the date of determination and Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities. The requirement of any agency not a Rating Agency shall be disregarded.

“Rating Agency Confirmation” means a written affirmation from each of the Rating Agencies that the credit rating of the Certificates assigned by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event. In the event that no Certificates are outstanding or the Loan is not part of a Securitization, any action that would otherwise require a Rating Agency Confirmation shall instead require the consent of Lender. All fees and expenses of the Rating Agencies incurred in connection with any Rating Agency Confirmation required pursuant to this Agreement as the result of a request or action of Borrower shall be paid by Borrower.

5.2.15 *Guarantor*. Notwithstanding anything to the contrary in the organizational documents of Guarantor, Guarantor shall not dissolve unless and until each of the following conditions have been satisfied: (i) an appropriate winding down of and disposition of its assets and liabilities, satisfaction of all claims, creditors and liabilities, and retention of adequate reserves to satisfy future contingent liabilities, including, without limitation, its liabilities under the Guaranty and the Environmental Indemnity; (ii) compliance with all organizational and applicable Legal Requirements relating to dissolution and winding up of Guarantor, and (iii) replacement of the Guarantor with a replacement guarantor acceptable to Lender in its sole discretion and as to which Lender has received a Rating Agency Confirmation.

ARTICLE VI.

INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1 **Insurance.**

6.1.1 *Insurance Policies*. Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, the following insurance policies:

(a) At all times prior to Completion of the Improvements and at any time thereafter during which construction work is being performed at the Property:

(A) Builder's Risk "All Risk" insurance in such amount as Lender shall require but in no event less than one hundred percent (100%) of the replacement cost value of the completed Project Improvements, but excluding foundations and any other improvements not subject to physical damage). Such policy shall be written on a Builder's Risk Completed Value Form (100% non-reporting) or its equivalent and shall include, without limitation, coverage for loss by testing, collapse, theft, flood, and earth movement. Such insurance Policy shall also include coverage for:

(i) Loss suffered with respect to materials, equipment, heating and air conditioning machinery, machinery, and supplies, in each case owned by Borrower or required to be insured by Borrower, whether on-site, in transit, or stored offsite and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property in each case owned by Borrower or required to be insured by Borrower;

(ii) Soft costs that are recurring costs, which shall include, without limitation, delayed opening loss of income/revenue coverage for a period of recovery of not less than twelve (12) months commencing from the date the Project Improvements are as to be completed agreed to by Lender in its sole discretion, as well as costs to reproduce plans, specifications, blueprints and models in connection with any restoration following a casualty;

(iii) Demolition, debris removal and increased cost of construction, including, without limitation, increased costs arising out of changes in applicable laws and codes; and

(iv) Operation of building laws.

(B) Borrower shall cause the Borrower's Architect to obtain and maintain Architect's or Professional Liability insurance during the period commencing on the date of the Architect's Contract respectively, and expiring no earlier than five (5) years after the Completion of the Improvements. Such insurance shall be in an amount equal to at least \$1,000,000 per claim or as otherwise acceptable to Lender.

(C) Commercial General Liability insurance (vacant building) naming Lender as an additional insured with a minimum liability of \$10,000,000 including "Umbrella Liability," of like amount per occurrence and in the aggregate per location.

(D) Workers Compensation, Employer's Liability coverage and Disability insurance as required by law covering Borrower.

(E) Prior to or simultaneously with its entering into the General Contractor's Agreement, Borrower shall, or shall cause the General Contractor to, obtain and maintain Commercial General Liability coverage, including, without limitation, products and completed operations and containing no "X", "C", "U" exclusion if excavation and/or demolition is to be provided, and Automobile Liability insurance with no less than \$10,000,000 in limits per occurrence and in the aggregate per project through primary and umbrella liability coverages. Such insurance shall name Borrower as the insured and Lender as additional insured. Borrower shall also require that all Contractors cause all of their respective subcontractors to maintain similar coverage with limits of no less than \$1,000,000 per occurrence and shall include Borrower and Lender as additional insureds. All Persons engaged in work on the improvements at the Property shall maintain statutory Workers Compensation and Disability insurance in force for all workers on the job. The liability insurance to be maintained by Borrower and/or the General Contractor pursuant to this subsection (E) shall include coverage for products and completed operations and coverage for construction defects for a period of five (5) years after Completion of the Improvements.

(b) At all times after Completion of the Improvements:

(i) comprehensive all risk insurance ("Special Form") including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for all such insurance coverage excluding windstorm and earthquake and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In

addition, Borrower shall obtain: (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require and (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity;

(ii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of at least eighteen (18) months after the date of the Casualty; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross revenues from the Property for the succeeding eighteen (18) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance; and

(iii) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above.

(c) At all times during the term of the Loan:

(i) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate and One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (C) to cover at least

the following hazards: (1) premises and operations; (2) products and completed operations on an “if any” basis; (3) independent contractors; (4) blanket contractual liability for all written contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(ii) automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million Dollars and 00/100 Dollars (\$1,000,000.00);

(iii) worker’s compensation and employee’s liability subject to the worker’s compensation laws of the applicable state;

(iv) umbrella and excess liability insurance in an amount not less than Fifty Million and 00/100 Dollars (\$50,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including, but not limited to, supplemental coverage for employer liability and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (ii) above;

(v) Insurance covering the decrease or diminution in value of the Property resulting from the enforcement of any law, building code, zoning regulation or other Legal Requirement or act of any Governmental Authority to the extent that the Property cannot legally be restored to a condition that existed prior to the Casualty (which insurance shall be in a stipulated sum amount reasonably acceptable to Lender in its sole discretion);

(vi) the insurance required under this Sections 6.1(a)(A) and 6.1(b)(i) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under Sections 6.1(a)(A) and 6.1(b)(i) above at all times during the term of the Loan; and

(vii) upon sixty (60) days written notice, such other reasonable insurance, including, but not limited to, sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(d) Intentionally Omitted.

(e) All insurance provided for in this Section 6.1 shall be obtained under valid and enforceable policies (collectively, the “**Policies**” or in the singular, the “**Policy**”), and, to the extent not specified above, shall be subject to the approval of Lender as to deductibles, loss payees and insureds. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Lender as loss payee. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies and within thirty (30) days after commencement of the new or

renewal Policy evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"), shall be delivered by Borrower to Lender.

(f) Prior to the renewal or replacement of any Policy (the "**Existing Policy**"), any required insurance may be procured under a blanket insurance Policy covering the Property and other properties or assets of Borrower or its affiliates, provided that any such blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of this **Article VI**. Lender, in its reasonable discretion, shall determine whether such blanket Policies provide sufficient limits of insurance.

(g) Unless otherwise specified, all Policies of insurance provided for or contemplated by this **Article VI** shall, in the case of property damage, builder's risk, boiler and machinery, flood and earthquake insurance, name Borrower as the insured and Lender (for the ratable benefit of Lenders and their successors and/or assigns) as the additional insured and shall contain a so-called New York standard non-contributing mortgagee clause or its equivalent in favor of Lender (including Lender as mortgagee and loss payee) providing that the loss thereunder shall be payable to Lender for the ratable benefit of Lenders and providing thirty (30) days' advance notice of cancellation to Lender.

(h) All Property insurance also shall include a co-insurance waiver and Agreed Amount Endorsement. The amount of any deductible under any Policy must be reasonably acceptable to Lender. Without the Lender's prior written consent, Borrower shall not name any Person other than the Lender, as loss payee, as it pertains to the Property, nor shall Borrower carry separate or additional insurance coverage covering the improvements at the Property concurrent in form or contributing in the event of loss with that required by this Agreement or; provided that, if blanket policies are obtained, this sentence shall not apply to property covered by such blanket policies other than the improvements at the Property and such tenant improvements and betterments that Borrower is required to insure pursuant to the applicable Lease.

(i) Each Policy shall contain a provision whereby the insurer: (i) agrees that such Policy shall not be canceled or terminated, the coverage, deductible, and limits of such Policy shall not be modified, other provisions of such Policy shall not be modified if such Policy, after giving effect to such modification, would not satisfy the requirements of this Agreement, and such Policy shall not be so modified, canceled or fail to be renewed, without in each case, at least thirty (30) days prior written notice to Lender, (ii) waives any right to claim any Insurance Premiums and commissions against Lender or any Lender, provided that the Policy need not waive the requirement that the Insurance Premiums be paid in order for a claim to be paid to the insured and (iii) provides that Lender is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums. In the event any Policy (except for general public and other liability and Workers Compensation insurance) shall contain breach of warranty provisions, such Policy shall not be invalidated by and shall insure Lender for the benefit of Lenders regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such Policy by any named insured, (B) the occupancy or use of the Property for purposes more hazardous than permitted by

the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Mortgage or any other Loan Document.

(j) Borrower shall pay the Insurance Premiums for the Policies as the same become due and payable. Borrower shall deliver to Lender certified copies of the Policies required to be maintained pursuant to this **Article VI**; provided, however, Lender shall not be deemed by reason of the custody of such Policies to have knowledge of the contents thereof. Borrower also shall deliver to Lender within ten (10) days after Lender's request, a statement setting forth the particulars as to all such Policies, indicating that all Insurance Premiums due thereon have been paid and that the same are in full force and effect. Not later than fifteen (15) days prior to the expiration date of each Policy, Borrower shall deliver to Lender a certificate of insurance evidencing renewal of coverage as required herein. Not later than thirty (30) days after the renewal or replacement of each of the Policies, Borrower shall deliver to Lender evidence of payment of Insurance Premiums for such renewal or replacement Policies satisfactory to the Lender and not later than sixty (60) days after the renewal or replacement of each of the Policies, Borrower shall deliver to Lender an original or certified copy (as required pursuant to this paragraph) of a renewal or replacement Policy or Policies.

(k) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is maintained in full force and effect, Lender shall have the right (but not the obligation), upon notice to Borrower, to take such action as Lender deems necessary to protect Lenders' interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate after three (3) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All Insurance Premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by the Building Loan Mortgage and shall bear interest at the Default Rate.

(l) In the event of foreclosure of the Building Loan Mortgage and/or the Project Loan Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Total Debt, all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

6.1.2 *Insurance Company*. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and having a claims paying ability rating of "A/VII" or better by A.M. Best Company, Inc. and "A- or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the Securities (one of which shall be S&P if they are rating the Securities and one of which will be Moody's if they are rating the Securities), or if only one (1) Rating Agency is rating the Securities, then only by such Rating Agency.

Section 6.2 **Casualty and Condemnation.**

6.2.1 *Casualty.* The term “**Net Proceeds**” for purposes of this Agreement shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to **Section 6.1.1 (b)(1), (b)(iii), (c)(ii) and (c)(iv)** as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same (“**Insurance Proceeds**”), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same (“**Condemnation Proceeds**”), whichever the case may be. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a “**Casualty**”), Borrower shall give prompt notice of such Casualty to Lender and Borrower shall promptly commence and diligently prosecute to completion the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such Casualty with such alterations as may be reasonably approved by Lender (a “**Restoration**”) and otherwise in accordance with this Agreement. Borrower shall pay all costs of such Restoration whether or not such costs are covered by the Net Proceeds. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

6.2.2 *Condemnation.* Borrower shall give Lender prompt notice of any actual or threatened commencement of any proceeding for the Condemnation by any Governmental Authority of all or any part of the Property and shall deliver to Lender a copy of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any Condemnation, Borrower shall continue to pay the Total Debt at the time and in the manner provided for its payment in the Building Loan Note and the Project Loan Note and in this Agreement and the Project Loan Agreement. Lenders shall not be limited to the interest paid on the Award by any Governmental Authority but shall be entitled to receive out of the Award interest and additional interest (if any) at the rate or rates provided in this Agreement or in the Building Loan Note or in the Project Loan Agreement or in the Project Loan Note, as applicable and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. If the Property or any portion thereof is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property pursuant to this **Section 6.2** and otherwise comply with the provisions of hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Building Loan Note or the Project Loan Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Total Debt. Notwithstanding anything contained in this **Section 6.2** or this Agreement to the contrary, Lender may, in its sole discretion, elect to (y) apply the net proceeds of any Condemnation

Proceeds (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Total Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Agreement restricting the right of Lender to make such an election is waived by Borrower. If the Condemnation Proceeds are made available to Borrower for restoration or repair, the Condemnation Proceeds shall be disbursed upon satisfaction of and in accordance with the terms and conditions set forth in this **Section 6.2**.

6.2.3 *Application of Net Proceeds.*

(a) **Minor Casualty or Condemnation.** If a Casualty or Condemnation has occurred to the Property, Borrower's right, title and interest in and to all Proceeds are, except as otherwise herein provided, hereby assigned by Borrower to Lender and all Net Proceeds shall, except as otherwise herein provided, be paid to Lender. Borrower shall, in good faith and in a commercially reasonable manner, file and prosecute the adjustment, compromise or settlement of any claim for Proceeds and, subject to Borrower's right to receive the direct payment of any Net Proceeds as herein provided, will cause the same to be paid directly to Lender to be held and applied in accordance with the provisions of this Agreement. Except upon the occurrence and during the continuance of an Event of Default, Borrower may settle any insurance claim with respect to Net Proceeds which do not One Million and 00/100 Dollars (\$1,000,000.00) (the "**Restoration Threshold**"). Whether or not an Event of Default shall have occurred and be continuing, Lender shall have the right to approve, such approval not to be unreasonably withheld, any settlement which would in Lender's reasonable judgment result in Net Proceeds which exceed the Restoration Threshold and Borrower shall deliver or cause to be delivered to Lender all instruments reasonably requested by Lender to permit such approval. Borrower shall pay all reasonable out-of-pocket costs, fees and expenses incurred by Lender on behalf of Lenders (including all reasonable attorneys' fees and expenses, the reasonable fees of insurance experts and adjusters and reasonable costs incurred in any litigation or arbitration), and interest thereon at the Default Rate to the extent not paid within fifteen (15) Business Days after delivery of a request for reimbursement by Lender, accompanied by reasonable back-up documentation, in connection with the settlement of any claim for Proceeds and the seeking and obtaining of any payment on account thereof in accordance with the foregoing provisions. If any Proceeds are received by Borrower and may be retained by Borrower pursuant to this **Section 6.2**, such Proceeds shall, until the completion of the related Work, be held in trust for Lender for the ratable benefit of Lenders and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof, and to the extent such Proceeds exceed the Restoration Threshold, such Proceeds shall be forthwith paid directly to and held by Lender to be applied or disbursed in accordance with this **Article VI**. If an Event of Default shall have occurred and be continuing, or if Borrower fails to file any insurance claim for a period of fifteen (15) Business Days, or to prosecute same with commercially reasonable diligence following Borrower's receipt of written notice to do so from Lender, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim (including settlement thereof) with counsel satisfactory to Lender and to collect and to make receipt for any such payment, all at Borrower's expense (including payment of interest at the Default Rate for any amounts advanced by Lender pursuant to this sentence). Notwithstanding anything to the contrary set forth in this Agreement, but excluding all situations requiring prepayment of the Note, to the extent any Proceeds (either singly or when

aggregated with all other then unapplied Proceeds with respect to the Property) do not exceed the Restoration Threshold, such Proceeds are to be paid directly to Borrower to be applied to restoration of the Property in accordance with the terms hereof. As soon as reasonably practicable after receipt of the Net Proceeds Borrower shall commence and satisfactorily complete with due diligence: (x) the Completion of the Improvements in accordance with the terms of this Agreement, if such Casualty or Condemnation occurs prior to the Completion of the Improvements; of (y) the Restoration in accordance with the terms of this Agreement, if such Casualty or Condemnation occurs after the Completion of the Improvements.

6.2.4 Major Casualty or Condemnation.

(a) If a Casualty or Condemnation has occurred to the Property, Borrower shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement and the Project Loan Agreement. If the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration, or Completion of the Improvements, as applicable, is equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration, provided that each of the following conditions are met:

(A) If the Casualty or Condemnation occurs prior to the Completion of the Improvements:

(i) No Event of Default shall have occurred and be continuing;

(ii) Lender is reasonably satisfied that the Net Proceeds plus any Advances available under this Building Loan Agreement and Project Loan Agreement is sufficient to cause the Completion of the Improvements and pay all Project-Related Costs to be incurred in connection therewith;

(iii) Lender shall be reasonably satisfied that Completion of the Improvements will be achieved on or prior to the Required Completion Date as such date may be extended by Force Majeure (which may include the Casualty giving rise to the Net Proceeds).

(B) If the Casualty or Condemnation occurs following the Completion of the Improvements:

(i) No Event of Default shall have occurred and be continuing;

(ii) In the event the Net Proceeds are Insurance Proceeds, less than thirty-five percent (35%) of the total floor area of the Improvements at the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are Condemnation :Proceeds, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) Leases demising in the aggregate a percentage amount equal to or greater than the Rentable Space Percentage of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Tenant, as applicable under the respective Lease, will make all necessary repairs and restorations thereto at their sole cost and expense. The term “**Rentable Space Percentage**” shall mean (1) in the event the Net Proceeds are Insurance Proceeds, a percentage amount equal to ninety percent (90%) and (2) in the event the Net Proceeds are Condemnation Proceeds, a percentage amount equal to ninety percent (90%);

(iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be) and Borrower shall diligently pursue the same to satisfactory completion;

(v) Lender shall be satisfied that any operating deficit, including all scheduled all payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be paid during the period required for Restoration from (A) the Net Proceeds, (B) the insurance coverage referred to in **Section 6.1.1(b)(ii)** hereof, if applicable, or (C) other funds of Borrower;

(vi) Lender shall be satisfied that the Restoration will be achieved, on or before the earliest to occur of (A) the date six (6) months prior to the Maturity Date, (B) such time as may be required under applicable Legal Requirements in order to repair and restore the Property to the condition it was in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable or (C) the expiration of the insurance coverage referred to above;

(vii) The Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(viii) The Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements; and

(ix) Such Casualty or Condemnation, as applicable, does not result in the permanent loss of access to the Property or the related Improvements

(x) the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal to or greater than 1.15 to 1.00;

(xi) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Lender; and

(xii) the Net Proceeds together with any Cash or Cash Equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this **Section 6.2.4** shall constitute additional security for the Total Debt and the Other Obligations under the Loan documents.

(c) Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all requirements set forth in **Section 6.2.4(a)** have been satisfied, (B) all relevant conditions to the making of Advances of the Building Loan shall have been satisfied with respect to disbursements of Net Proceeds for Restoration as though such disbursements were of Loan Proceeds rather than Net Proceeds, it being understood however that disbursements of Net Proceeds shall not be deemed to be advances of the Loan, (C) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (D) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other Liens of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company issuing the Title Insurance Policy.

(d) All plans and specifications required in connection with the Restoration shall be subject to prior approval by Lender and by an independent architect selected by Lender (which shall be the Construction Consultant if the Casualty or Condemnation occurs prior to the Completion of the Improvements) (the "**Casualty Consultant**"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to approval by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys' fees and disbursements and the Casualty Consultant's reasonable fees and disbursements, shall be paid by Borrower.

(e) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "**Casualty Retainage**" shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in

no event, and notwithstanding anything to the contrary set forth above, be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this **Section 6.2** and all applicable Legal Requirements and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; *provided, however*, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of such contractor's, subcontractor's or materialman's contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the Title Company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the Lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(f) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(g) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "**Net Proceeds Deficiency**") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this **Section 6.2.4** shall constitute additional security for the Debt.

(h) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this **Section 6.2.4**, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be deposited in the Cash Management Account to be disbursed in accordance with the Cash Management Agreement provided no Event of Default shall have occurred and shall be continuing under any of the Loan Documents.

(i) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to this **Article VI** may be retained and applied by Lender toward the payment of the Total Debt in accordance with Section

2.4.2 whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion.

Section 6.3 **Application of Net Proceeds**. Upon the occurrence and continuation of an Event of Default, Lender, at its option, may withdraw all the Net Proceeds or the undisbursed balance thereof and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender and may apply the such Net Proceeds and Net Proceeds Deficiency either to the payment of Restoration or to payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply such Net Proceeds and Net Proceeds Deficiency shall be in addition to all other rights and remedies provided to Lender under the Building Loan Documents.

ARTICLE VII.

RESERVE FUNDS

Section 7.1 **Tax and Insurance Escrow Fund**. On the date hereof, Borrower shall pay or cause to be paid, all Taxes, Insurance Premiums and Other Charges that will be payable on or prior to January 2, 2008. Simultaneously with the Initial Advance, Borrower shall deposit with Lender an amount (the "**Initial Tax and Insurance Escrow Deposit**") equal to the Taxes, Insurance Premiums and Other Charges that Lender estimates will be payable from and after the date of the Initial Advance through and including the date that the Second Tax and Insurance Escrow Deposit is payable, which shall be funded from the Project Loan Advance. At least thirty (30) day prior to the first anniversary of the date hereof, Borrower shall deposit with Lender an amount (the "**Second Tax and Insurance Escrow Deposit**") equal to the Taxes, Insurance Premiums and Other Charges that Lender estimates will be payable from and after the first anniversary of the date hereof through and including the last day of the Construction Term. Subject to the terms and conditions of the Project Loan Agreement concerning Advances, the Second Tax and Insurance Escrow Deposit shall be funded from an Advance of like amount under the Project Loan. Simultaneously with the Final Advance, Borrower shall pay to Lender an amount that, when added to the amounts payable under the next sentence, will be sufficient to accumulate with Lender sufficient funds to pay all Taxes and Other Charges payable on the next due date thereof at least thirty (30) days prior to their respective due dates, and to pay all Insurance Premiums that Lender estimates will be payable for the next renewal of the coverage afforded by the Policies upon the expiration thereof at least thirty (30) days prior to the expiration of the Policies. In addition, Borrower shall pay to Lender (or shall cause Lender to advance) on each Payment Date occurring after the Construction Term (a) one-twelfth (1/12) of the Taxes and Other Charges that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes and Other Charges at least thirty (30) days prior to their respective due dates, and (b) one-twelfth (1/12) of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "**Tax and Insurance Escrow Fund**"). The Tax and Insurance Escrow Fund and the Monthly Debt Service Payment Amount, shall be added together and shall be paid as an aggregate sum by Borrower to

Lender. Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to **Section 5.1.2** hereof and under the Mortgage. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to **Section 5.1.2** hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. Any amount remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be returned to Borrower. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments (or, if such determination is made during the Construction Term, Borrower shall deposit the full amount of such deficiency within 5 days of such notice) to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and Other Charges and/or thirty (30) days prior to expiration of the Policies, as the case may be. Notwithstanding the foregoing, Borrower's obligation to make monthly deposits with Lender for Insurance Premiums shall be suspended for so long as no Event of Default has occurred and is continuing and Borrower provides Lender with written evidence reasonably satisfactory to Lender that all insurance coverages required to be maintained by Borrower pursuant to the terms of this Agreement are being maintained in full force and effect through one or more blanket insurance policies (provided that any such blanket insurance policies provide the same level of coverage which would otherwise be provided by a stand-alone policy). Borrower shall provide evidence reasonably acceptable to Lender on an annual basis thirty (30) days prior to the expiration of the existing insurance that the insurance has been renewed and will provide notice of cancellation for non-payment. In the event Borrower fails to provide such evidence or an Event of Default occurs, however, Borrower will thereafter be required to make deposits with Lender for Insurance Premiums as provided herein.

Section 7.2 **Interest Reserve.**

7.2.1 *Deposit of Interest Reserve Funds.* Simultaneously with the Initial Advance, Borrower shall deposit the sum of \$5,970,398.00 with Lender (the "**Initial Interest Reserve Deposit**"), which shall be funded from the Initial Advance of the Project Loan. In addition, pursuant to **Section 5.1.28(d)**, Borrower may be obligated to deposit an Additional Interest Reserve Deposit and in the event that Lender determines in its sole discretion that the Interest Reserve Funds on deposit in the Interest Reserve Account are insufficient, Borrower shall deposit with Lender an amount equal to the deficiency in the Interest Reserve Funds as determined by Lender (each an "**Interest Reserve Deposit**", each such amount so deposited shall hereinafter be referred to as the "**Interest Reserve Fund**"). The account in which the Interest Reserve Fund are held shall hereinafter be referred to as Borrower's "**Interest Reserve Account**". In lieu of making the Interest Reserve Deposits with Lender, Borrower shall have the right to deliver to Lender an irrevocable Letter of Credit acceptable to Lender in the amount of the Interest Reserve Deposit.

7.2.2 Release of Interest Reserve Funds. Provided no Event of Default or monetary Default exists and no amounts remain available for Advance under the Interest Reserve Line Item of the Project Loan Budget, on each Payment Date, Lender shall apply the Interest Reserve Funds to payments of the Monthly Debt Service Payment due on such date.

7.2.3 Application of Interest Reserve Funds. Upon the occurrence of an Event of Default, Lender, at its option, may withdraw all the Interest Reserve Funds and if Lender does so, shall apply the Interest Reserve Funds either to the payment of interest due on the Loan or toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Interest Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

Section 7.3 Replacements and Replacement Reserve.

7.3.1 Replacement Reserve Fund. From and after Completion of the Improvements, Borrower shall pay to Lender on each Payment Date an amount equal to \$3,962.00 (the "**Replacement Reserve Monthly Deposit**") for replacements and repairs required to be made to the Property (collectively, the "**Replacements**"). Amounts so deposited shall hereinafter be referred to as Borrower's "**Replacement Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as Borrower's "**Replacement Reserve Account**". Lender may reassess its estimate of the amount necessary for the Replacement Reserve Fund from time to time, and may increase the monthly amounts required to be deposited into the Replacement Reserve Fund upon thirty (30) days notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain the proper maintenance and operation of the Property. Notwithstanding the foregoing, Borrower shall not be required to deposit any portion of the Replacement Reserve Monthly Deposit which would cause the amount then on deposit in the Replacement Reserve, as determined by Lender, to exceed \$236,280 (the "**Replacement Reserve Cap**"). When the Replacement Reserve Funds on deposit in the Replacement Reserve Account equals or exceeds the Replacement Reserve Cap, Borrower may cease making Replacement Reserve Monthly Deposits to the Replacement Reserve Fund. If at any time thereafter the amount of the Replacement Reserve funds on deposit in the Replacement Reserve Account is less than the Replacement Reserve Cap, then Borrower shall recommence and continue making Replacement Reserve Monthly Deposits to the Replacement Reserve Funds, until the amount of Replacement Reserve Funds on deposit in the Replacement Reserve Account equal or exceed the Replacement Reserve Cap.

7.3.2 Disbursements from Replacement Reserve Account. (a) Lender shall make disbursements from the Replacement Reserve Account to pay Borrower only for the costs of the Replacements. Lender shall not be obligated to make disbursements from the Replacement Reserve Account to reimburse Borrower for the costs of routine maintenance to the Property, replacements of inventory or for costs which are a Tenant's obligation.

(b) Lender shall, upon written request from Borrower and satisfaction of the requirements set forth in this **Section 7.3.2**, disburse to Borrower amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower therefor, upon completion of such Replacements (or, upon partial completion in the

case of Replacements made pursuant to **Section 7.3.2(e)** hereof) as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Lender and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower shall certify that all Replacements have been made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the Property. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided and, unless Lender has agreed to issue joint checks as described below in connection with a particular Replacement, each request shall include evidence satisfactory to Lender of payment of all such amounts. Except as provided in **Section 7.3.2(e)** hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide Lender evidence of completion of the subject Replacement satisfactory to Lender in its reasonable judgment.

(d) Borrower shall pay all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower, Lender will issue joint checks, payable to Borrower and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Lender may require a waiver of lien from each Person receiving payment prior to Lender's disbursement from the Replacement Reserve Account. In addition, as a condition to any disbursement, Lender may require Borrower to obtain lien waivers from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for completion of its work or delivery of its materials. Any lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor, supplier, subcontractor, mechanic or materialmen is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the cost of a Replacement exceeds Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), (ii) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments, a request for reimbursement from the Replacement Reserve Account may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of the work, (B) the materials for which the request is made are on site at the Property and are properly secured or

have been installed in the Property, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Lender's judgment, sufficient to complete such Replacement and other Replacements when required, and (E) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than Ten Thousand and 00/100 Dollars (\$10,000.00).

7.3.3 *Performance of Replacements.* (a) Borrower shall make Replacements when required in order to keep the Property in condition and repair consistent with other first class, mixed use retail and self-storage facilities in the same market segment in the metropolitan area in which the Property is located, and to keep the Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender reserves the right, at its option, to approve all contracts or work orders over Twenty-five Thousand and 00/100 Dollars (\$25,000.00) with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

(c) In the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner, after notice and a reasonable period to cure, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, upon reasonable prior notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(d) In order to facilitate Lender's completion or making of such Replacements pursuant to **Section 7.3.3(c)** above, Borrower grants Lender the right to enter onto the Property and perform any and all work and labor necessary to complete or make such Replacements and/or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (iii) to employ such contractors, subcontractors, agents, architects

and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this **Section 7.3.3** shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(f) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties making Replacements pursuant to this **Section 7.3.3** to enter onto the Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and to complete any Replacements made pursuant to this **Section 7.3.3**. Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this **Section 7.3.3(f)** or the completion of Replacements pursuant to this **Section 7.3.3**.

(g) Lender may require an inspection of the Property at Borrower's expense prior to making a monthly disbursement from the Replacement Reserve Account in order to verify completion of the Replacements for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Lender).

(i) Before each disbursement from the Replacement Reserve Account, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other liens of any nature have been placed against the Property since the date of recordation of the related Mortgage and that title to the Property is free and clear of all Liens (other than the lien of the related Mortgage and any other Liens previously approved in writing by Lender, if any).

(j) All Replacements shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(k) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgage clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4 *Failure to Make Replacements*. (a) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this **Section 7.3** and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of such an Event of Default, Lender may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including but not limited to completion of the Replacements as provided in **Section 7.3.3**, or for any other repair or replacement to the Property or toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

(a) Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Total Debt or in any specific order or priority.

7.3.5 *Balance in the Replacement Reserve Account*. The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

Section 7.4 **Punch List and Deferred Maintenance Reserve**.

7.4.1 *Establishment of Deferred Maintenance Reserve*. In the event that, following the Completion of the Improvements but prior to the Final Advance, Lender determines that any Punch List Items remain to be completed or if Lender determines that any condition (a "**Deferred Maintenance Condition**") exists at the Property which requires maintenance or correction, Borrower shall deposit with Lender an amount equal to 150% of Lender's good faith estimate of the cost to perform any Punch List Items plus 125% of Lender's good faith estimate of the cost of performing such Deferred Maintenance Condition (the "**Punch List and Deferred Maintenance Reserve Deposit**", such amounts so deposited shall hereinafter be referred to as the "**Punch List and Deferred Maintenance Reserve Funds**").

7.4.2 *Performance of Punch List Items and Deferred Maintenance*. Borrower shall correct the Punch List Items and Deferred Maintenance Conditions in a diligent, workmanlike manner and shall complete the same within a reasonable time period. Upon the

request of Borrower from time to time (but not more often than once per calendar month), Lender shall cause disbursements to Borrower from the Punch List and Deferred Maintenance Reserve Funds to reimburse Borrower for reasonable costs and expenses incurred in order to correct Punch List Items and Deferred Maintenance Conditions, upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Punch List Items and Deferred Maintenance Conditions to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured, (c) Lender shall have received an Officers' Certificate (i) stating that all the Punch List Items and Deferred Maintenance Conditions to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete the Punch List Items and Deferred Maintenance Conditions, (ii) identifying each Person that supplied materials or labor in connection with the Punch List Items and Deferred Maintenance Conditions to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such Officers' Certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (e) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender may condition the making of a requested disbursement on (1) reasonable evidence establishing that Borrower has applied any amounts previously received by it in accordance with this **Section 7.4** for the expenses to which specific draws made hereunder relate, (2) reasonably satisfactory site inspections, and (3) receipt of lien releases and waivers from any contractors, subcontractors and others with respect to such amounts. Lender shall not be required to make disbursements from the Required Repair Account with respect to the Property unless such requested disbursement is in an amount greater than Twenty-five Thousand and 00/100 Dollars (\$25,000.00) (or a lesser amount if the total amount in the Required Repair Account is less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00), in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this **Section 7.4.2**.

7.4.3 Release of Deferred Maintenance Funds. Upon substantial completion (as reasonably determined by Lender) of any Punch List Item or Deferred Maintenance Condition, and provided no Event of Default is then continuing, Lender shall, on the first following Payment Date, release to Borrower the remainder of the portion of the Punch List and Deferred Maintenance Reserve Funds held for such Punch List Item or Deferred Maintenance Condition.

Section 7.5 **Intentionally Omitted.**

Section 7.6 **Excess Cash Flow.** Any Excess Cash Flow that, pursuant to the Cash Management Agreement, is required to be deposited to the Excess Cash Flow Reserve (such funds "**Excess Cash Flow Funds**") shall be deposited in an account (the "**Excess Cash Flow**

Reserve Account") and held by Lender as additional security for the payment and performance by Borrower of its obligations hereunder and other the other Loan Documents.

Section 7.7 **Operating Reserve.**

7.7.1 **Deposit of Operating Reserve Funds.** In the event that, following the Completion of the Improvements, Lender determines that the Gross Income from Operations is not sufficient to pay the Operating Expenses of the Property and the Total Debt Service, Borrower shall deposit with Lender an amount equal Lender's good faith estimate of the shortfall in Gross Income from Operations until such time that Lender determines that the Property will achieve a Debt Service Coverage Ratio of 1.15 to 1.00 (the "**Operating Reserve Deposit**", such amounts so deposited shall hereinafter be referred to as the "**Operating Reserve Funds**"). The account in which the Interest Reserve Fund are held shall hereinafter be referred to as the "**Operating Reserve Account**".

7.7.2 **Release of Operating Reserve Funds.** Provide no Event of Default or monetary Default exists, in the event that the amounts on deposit in the Cash Management Account are not sufficient to make the payments required under **Section 3.4(a)** through **(g)**, of the Cash Management Agreement on each Payment Date, Lender shall apply the Operating Reserve Funds to payments of the such items.

7.7.3 **Application of Operating Reserve Funds.** Upon the occurrence of an Event of Default, Lender, at its option, may withdraw all the Operating Reserve Funds and if Lender does so, shall apply the Operating Reserve Funds toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Operating Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

7.7.4 **Release of Operating Reserve Funds.** Provided that no Event of Default or Monetary Default then exists if Lender determines that the Property has achieved a Debt Service Coverage Ratio of 1.15 to 1.00 for two consecutive Debt Service Coverage Ratio Determination Dates, Lender shall release to Borrower any amount remaining in the Operating Reserve Account.

Section 7.8 **Rollover Reserve.**

7.8.1 **Deposits to Rollover Reserve Fund.** From and after Completion of the Improvements, Borrower shall pay to Lender on each Payment Date the sum of \$15,645.33 (the "**Rollover Reserve Monthly Deposit**"), which amounts shall be deposited with and held by Lender for tenant improvement and leasing commission obligations incurred following the date hereof. Amounts so deposited shall hereinafter be referred to as the "**Rollover Reserve Fund**" and the account to which such amounts are held shall hereinafter be referred to as the "**Rollover Reserve Account**". Notwithstanding the foregoing, Borrower shall not be required to deposit any portion of the Rollover Reserve Monthly Deposit which would cause the amount then on deposit in the Rollover Reserve, as determined by Lender, to exceed \$938,720.00 (the "**Rollover Reserve Cap**"). When the Rollover Reserve Funds on deposit in the Rollover Reserve Account equals or exceeds the Rollover Reserve Cap, Borrower may cease making Rollover Reserve

Monthly Deposits to the Rollover Reserve Fund. If at any time thereafter the amount of the Rollover Reserve funds on deposit in the Rollover Reserve Account is less than the Rollover Reserve Cap, then Borrower shall recommence and continue making Rollover Reserve Monthly Deposits to the Rollover Reserve Funds, until the amount of Rollover Reserve Funds on deposit in the Rollover Reserve Account equal or exceed the Rollover Reserve Cap.

7.8.2 Withdrawal of Rollover Reserve Funds. Lender shall make disbursements from the Rollover Reserve Fund for tenant improvement and leasing commission obligations incurred by Borrower. All such expenses shall be approved by Lender in its sole discretion. Lender shall make disbursements as requested by Borrower on a quarterly basis in increments of no less than \$5,000.00 upon delivery by Borrower of Lender's standard form of draw request accompanied by copies of paid invoices for the amounts requested and, if required by Lender, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Lender may require an inspection of the Property at Borrower's expense prior to making a quarterly disbursement in order to verify completion of improvements for which reimbursement is sought.

Section 7.9 Ground Lease Reserve Fund.

7.9.1 Deposits to Ground Lease Fund. From and after the earlier of the Completion of the Improvements or the Required Completion Date, Borrower shall deposit with Lender, the sum of \$250,000.00. On each Payment Date, commencing on the Payment Date occurring in February, 2008, Borrower shall pay to Lender an amount equal to the rents (including both base and additional rents) and other charges due under the Ground Lease that will be payable by Borrower as lessee under the Ground Lease (collectively, the "**Ground Rent**") on the next date that Ground Rent is payable under the Ground Lease. Amounts so deposited shall hereinafter be referred to as the "**Ground Lease Reserve Fund**" and the account in which such amounts are held shall hereinafter be referred to as the "**Ground Lease Reserve Account.**" Notwithstanding the foregoing, Borrower's obligation to make monthly deposits with Lender for Ground Rent shall be suspended for so long as no Event of Default has occurred and is continuing and Borrower provides Lender with written evidence reasonably satisfactory to Lender on a monthly basis that all Ground Rent has been paid when due. In the event Borrower fails to provide such evidence or an Event of Default occurs, however, Borrower will thereafter be required to make deposits with Lender for Ground Rent as provided herein.

7.9.2 Release of Ground Lease Reserve Fund. Provided no Event of Default has occurred and is continuing, Lender shall apply amounts in the Ground Lease Reserve Fund to the payment of the Ground Rent as and when such Ground Rent is payable. In making any payment relating to the Ground Rent, Lender may do so according to any bill, statement or estimate procured from the Ground Lessor, without inquiry into the accuracy of such bill, statement or estimate. Any amounts remaining in the Ground Lease Reserve Fund after the Debt has been paid in full shall be returned to Borrower. If the Ground Rent increases at any time Borrower shall, within thirty (30) days thereafter, deposit with Lender such amount as shall be sufficient so that at all times the amount on deposit in the Ground Rent Reserve Account shall be not less than two month's rent.

Section 7.10 Storage Facility Master Lease Reserve.

7.10.1 *Storage Facility Master Lease Reserve Fund*. On the earlier of the Completion of the Improvements or the Required Completion Date, Borrower shall deposit with Lender the amount of \$800,000.00, representing one (1) year's Storage Facility Rent under the Storage Facility Master Lease, which amount shall be deposited with and held by Lender as additional security for the Loan. Amounts so deposited shall hereinafter be referred to as the "Storage Facility Master Lease Reserve Fund" and the account in which such amount is held shall hereinafter be referred to as the "Storage Facility Master Lease Reserve Account". Until such time as the Storage Facility Master Lease Reserve Fund is fully released as set forth in **Section 7.10.2**, the Storage Facility Master Lease Reserve Fund shall be held by Lender as additional security for the Loan. The tenant under the Storage Facility Master Lease shall be obligated to make monthly rent payments and reimbursements thereunder until such time as the Storage Facility Master Lease shall have been terminated pursuant to **Section 5.1.44**.

7.10.2 *Disbursement of Storage Facility Master Lease Reserve Funds*. Provided no Event of Default shall have occurred and be continuing; Lender shall disburse the Storage Facility Master Lease Reserve Fund in the event that (a) the Self Storage Facility is open for business and (b) either (i) the Self Storage Facility yields an underwritten Net Cash Flow of \$800,000 with no free rent, credit or right of offset, or (ii) the entire Property yields a Stabilized Net Cash Flow of \$3,100,000.

Section 7.11 **Reserve Funds, Generally**. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Total Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account in Permitted Investments in accordance with the terms and provisions of the Cash Management Agreement. Interest earned on the Replacement Reserve Funds shall be added to and become a part of such Reserve Fund and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Any interest on the Rollover Reserve Funds, the Ground Rent Reserve Funds, the Cash Collateral Reserve Funds, the Punch List and Deferred Maintenance Reserve Funds, the Operating Reserve Funds, the Interest Reserve Funds, the Storage Facility Master Lease Reserve Fund and the Tax and Insurance Escrow Funds shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the

performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

Section 7.12 **Letter of Credit Rights.** Any Letter of Credit delivered to Lender pursuant to this Agreement shall be held by Lender as additional security for the Loan. Lender shall have the right to draw upon any Letter of Credit immediately and without further notice:

(a) upon the occurrence and during the continuance of an Event of Default;

(b) if Borrower fails to deliver to Lender, no less than thirty (30) days prior to the expiration of any Letter of Credit (including any renewal or extension thereof), a renewal or extension of such Letter of Credit or a replacement Letter of Credit; or

(c) if the institution issuing the Letter of Credit ceases to be an Approved Bank and Borrower fails to deliver to Lender a replacement Letter of Credit from an Approved Bank within thirty (30) days of the date that such institution ceased to be an Approved Bank.

ARTICLE VIII.

DEFAULTS

Section 8.1 **Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);

(ii) if any of the Taxes (other than Taxes being contested pursuant to **Section 5.1.2** of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;

(iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;

(iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender’s prior written consent in violation of the provisions of this Agreement or the Mortgage;

(v) if any material representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mezzanine Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mezzanine Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any covenant contained in **Section 4.1.30**;

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Borrower fails to pay the Administration Fee, or any portion or installment thereof, within five (5) days of the date when due;

(xiii) If Borrower fails to deposit with Lender the cash deposit or Letter of Credit required in accordance with **Section 2.12.2** hereof;

(xiv) if Borrower fails to materially comply with the Construction Schedule;

(xv) if the Completion of the Improvements has not occurred on or prior to the Required Completion Date, subject to Force Majeure or if Lender or the Construction Consultant determines that Completion of the Improvements cannot occur on or prior to the Required Completion Date;

- (xvi) if any voucher or invoice is fraudulently submitted by Borrower or in connection with any Advance for services performed or for materials used in or furnished for the Property;
- (xvii) if there is any cessation at any time in construction of the Project Improvements for more than twenty (20) consecutive Business Days, other than as a result of Force Majeure;
- (xviii) if Borrower expressly confesses in writing to Lender its inability to continue or complete construction of the Project Improvements in accordance with this Agreement;
- (xix) if Lender, the Construction Consultant or their representatives are not permitted at all reasonable times upon not less than three (3) Business Days notice to enter upon the Property, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans and Specifications, or if Borrower shall fail to furnish to Lender or its authorized representative, when requested upon not less than five (5) Business Days notice, copies of the Plans and Specifications;
- (xx) if a material adverse change in Borrower's financial condition shall occur which would, in Lender's reasonable determination, materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any other document evidencing or securing the Loan beyond any applicable notice and grace periods expressly set forth in the Loan Documents;
- (xxi) if the conditions precedent to the Final Advance have not been satisfied on or prior to the Required Completion Date;
- (xxii) If the Guarantor fails to maintain the Required Liquidity and the Required Net Worth covenants specified in the Guaranty of Completion or if the Guarantor shall default under the Guaranty of Completion or the Guaranty of Recourse Carveouts;
- (xxiii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);
- (xxiv) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of **Section 9.1** hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of **Section 9.1** hereof, in either case for three (3) Business Days after notice to Borrower from Lender;
- (xxv) if an Event of Default (as defined in the Project Loan Agreement) shall have occurred;

(xxvi) if there shall be default by Borrower or Guarantor under any of the other Loan Documents, beyond applicable cure periods, if any, contained in such documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such other default, event or condition is to accelerate the maturity of all or any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xxvii) if (A) a breach or default by Borrower under any condition or obligation contained in the Ground Lease shall occur, (B) there occurs any event or condition that gives the Ground Lessor under the Ground Lease a right to terminate or cancel the Ground Lease, (C) the Ground Lease shall be surrendered or the Ground Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, or (D) any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the prior written consent of Lender;

(xxviii) if (A) a breach or default by Borrower or Storage Facility Tenant under any condition or obligation contained in the Storage Facility Master Lease shall occur, (B) there occurs any event or condition that gives the Borrower or the Storage Facility Tenant under the Storage Facility Master Lease a right to terminate or cancel the Storage Facility Master Lease, (C) the Storage Facility Master Lease shall be surrendered or the Storage Facility Master Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, except as specifically permitted herein, or (D) any of the terms, covenants or conditions of the Storage Facility Master Lease shall in any manner be modified, changed, supplemented, altered, or amended without the prior written consent of Lender;

(xxix) if Guarantor or Storage Facility Tenant shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of **Section 5.2.15** or **Section 5.1,44(e)** hereof, respectively; or

(xxx) if the Initial Advance Conditions are not satisfied by the Required Initial Advance Date; or

(xxxi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxx) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 **Remedies.**

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) to Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured

by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 **Remedies Cumulative; Waivers.** The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE IX.

SPECIAL PROVISIONS

Section 9.1 **Sale of Notes and Securitization.** Borrower acknowledges and agrees that Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a “**Securitization**”). At the request of Lender, and to the extent not already required to be

provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable efforts to provide information not in the possession of Lender or which may be reasonably required by Lender or take other actions reasonably required by Lender, in each case in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender, prospective investors and/or the Rating Agencies;

(b) assist in preparing descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower and approved by Lender, Guarantor and their respective affiliates to obtain, collect, and deliver information requested or required by Lender, prospective investors and/or the Rating Agencies;

(c) deliver (i) an Additional Insolvency Opinion and an opinion with respect to, due execution and enforceability with respect to the Property, Borrower, Guarantor and their respective Affiliates and the Loan Documents, and such other legal opinions as Lender may request including, without limitation, a so called "10b-5" opinion, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

(d) if required by any prospective investor and/or any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect the Property, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

(e) make such representations and warranties as of the closing date of the Securitization with respect to the Property, Borrower, Guarantor and the Loan Documents as may be reasonably requested by Lender, prospective investors and/or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents;

(f) execute such amendments to the Loan Documents as may be requested by Lender, prospective investors and/or the Rating Agencies to effect the Securitization;

(g) if requested by Lender, review any information regarding the Property, Borrower, Guarantor, and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(h) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws.

9.1.2 *Loan Components.*

(a) Borrower covenants and agrees that in connection with any Securitization of the Loan, upon Lender's request, Borrower shall deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan (and such new notes or modified note shall initially have the same fully funded weighted average interest rate as the original note, but such new notes or modified note may subsequently change the weighted average spread and apply principal, interest rates and amortization of the Loan between the components in a manner specified by Lender in its sole discretion) and modify the Cash Management Agreement with respect to the newly created components such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that the same do not materially increase Borrower's obligations and/or liabilities under the Loan Documents or materially decrease Borrower's rights under the Loan Documents.

(b) Borrower covenants and agrees that Lender may hereafter convert any portion of the Loan to subordinate financing, including one or more tranches of mezzanine debt, preferred equity, subordinate debt or participation in such loan, subordinate to such loan (collectively, "**Subordinate Financing**"), provided, however, such Subordinate Financing and the Loan following the creation of the Subordinate Financing shall, in the aggregate, initially have the same fully funded weighted average interest rate as the fully funded interest rate of the Loan prior to the creation of such Subordinate Financing, but such Subordinate Financing may subsequently change the weighted average spread and Lender may apply principal, interest rates and amortization of the Loan and the Subordinate Financing in a manner specified by Lender in its sole discretion. If the Subordinate Financing takes the form of a mezzanine loan, a mezzanine borrower (the "**Mezzanine Borrower**") may be created which will own one hundred percent (100%) of the equity interests in the Borrower. One hundred percent (100%) of the ownership and economic interests in the Mezzanine Borrower may, at Lender's discretion, be required to be pledged as security for such tranches of Subordinate Financing, if any. A default with the related Loan shall be a default under the respective Subordinate Financing. Such Subordinate Financing shall be subject to an intercreditor agreement by and between the Lender and the subordinate lender(s).

9.1.3 *Costs of Subordinate Financing.* Borrower shall be responsible for all costs and expenses incurred by Lender in connection with any Subordinate Financing, (including reasonable attorneys' fees and disbursements) including without limitation (i) the preparation, negotiation, execution and delivery of any mezzanine loan documents ("**Mezzanine Loan Documents**") and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Borrower and Mezzanine Borrower; (ii) Mezzanine Borrower's and Lender's ongoing performance under and compliance with the Mezzanine Loan Documents, including confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Mezzanine Loan Document and any other documents or matters requested by Lender; (iv) filing and recording of any Mezzanine Loan Documents; (v) title insurance (including any applicable mezzanine endorsements or UCC endorsements or policies), surveys, inspections and appraisals; (vi) the creation, perfection or

protection of Lender's Liens in the collateral securing the Mezzanine Loan Documents (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Construction Consultant, surveys and engineering reports); and (vii) fees charged by Rating Agencies in connection with the creation of the Subordinate Financing, or any modification of the Loan or the Subordinate Financing.

Section 9.2 **Securitization Indemnification**. (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) The Indemnifying Persons agree to provide, in connection with the Securitization, an indemnification agreement (A) certifying that (i) the Indemnifying Persons have carefully examined the Disclosure Documents, including without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Mortgages," "Description of the Mortgage Loans and Mortgaged Property," "The Manager," "The Borrower" and "Certain Legal Aspects of the Mortgage Loan," and (ii) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Manager and/or the Loan) (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) jointly and severally indemnifying Lender, BSCMI (whether or not it is the Lender), any Affiliate of BSCMI that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of BSCMI that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Indemnified Persons**"), for any losses, claims, damages, liabilities, costs or expenses (including without limitation legal fees and expenses for enforcement of these obligations (collectively, the "**Liabilities**") to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they are incurred,

in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (B) and (C) above shall be effective, valid and binding obligations of the Indemnifying Persons whether or not an indemnification agreement described in clause (A) above is provided.

(c) In connection with Exchange Act Filings, the Indemnifying Persons jointly and severally agree to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against any Indemnifying Person, notify such Indemnifying Person in writing of the claim or the commencement of that action; provided, however, that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have under the indemnification provisions of this **Section 9.2** except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this **Section 9.2**. If any such claim or action shall be brought against an Indemnified Person, and it shall notify any Indemnifying Person thereof, such Indemnifying Person shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Indemnifying Person to the Indemnified Person of its election to assume the defense of such claim or action, such Indemnifying Person shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both an Indemnifying Person, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to the Indemnifying Person, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which the Indemnifying Person is required hereunder to indemnify such Indemnified Person. No Indemnifying Person shall be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded that

there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior written consent of BSCMI (which consent shall not be unreasonably withheld or delayed), no Indemnifying Person shall settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless the Indemnifying Person shall have given BSCMI reasonable prior written notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as an Indemnifying Person has complied with its obligations to defend and indemnify hereunder, such Indemnifying Person shall not be liable for any settlement made by any Indemnified Person without the consent of such Indemnifying Person (which consent shall not be unreasonably withheld or delayed).

(f) The Indemnifying Persons agree that if any indemnification or reimbursement sought pursuant to this **Section 9.2** is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this **Section 9.2**), then the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of the Indemnifying Persons, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this **Section 9.2**, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) the Indemnifying Persons agree that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees actually received by the Indemnified Persons in connection with the closing of the Loan.

(g) The Indemnifying Persons agree that the indemnification, contribution and reimbursement obligations set forth in this **Section 9.2** shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. The Indemnifying Persons further agree that the Indemnified Persons are intended third party beneficiaries under this **Section 9.2**.

(h) The liabilities and obligations of the Indemnified Persons and the Indemnifying Persons under this **Section 9.2** shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

Section 9.3 **Exculpation**. Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgage or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgage and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud or intentional misrepresentation by Borrower or Guarantor in connection with the Loan;

(ii) the gross negligence or willful misconduct of Borrower;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement or in the Mortgage concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;

(iv) the removal or disposal of any portion of the Property after an Event of Default;

(v) the misapplication or conversion by Borrower of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents following an Event of Default, or (D) any Rents paid more than one month in advance;

(vi) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property;

(vii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof; or

(viii) the breach of any representation, warranty, covenant or indemnification provision in the Guaranty of Completion or Guaranty of Recourse Carveouts;

(ix) if (A) a breach or default by Borrower under any condition or obligation contained in the Ground Lease is not cured within any applicable cure period provided therein, (B) there occurs any event or condition that gives the Ground Lessor under the Ground Lease a right to terminate or cancel the Ground Lease, or (C) the Ground Lease shall be surrendered or the Ground Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever, or (D) any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without the prior written consent of Lender; or

(x) if (A) a breach or default by Borrower or Storage Facility Tenant under any condition or obligation contained in the Storage Facility Master Lease occurs, (B) there occurs any event or condition that gives the Borrower or Storage Facility Tenant under the Storage Facility Master Lease a right to terminate or cancel the Storage Facility Master Lease, (C) the Storage Facility Master Lease shall be surrendered or the Storage Facility Master Lease shall be terminated or cancelled for any reason or under any circumstances whatsoever without the prior written consent of Lender, or (D) any of the terms, covenants or conditions of the Storage Facility Master Lease shall in any manner be modified, changed, supplemented, altered, or amended without the prior written consent of Lender.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan

Documents, and (B) the Debt shall be fully recourse to Borrower (i) in the event of: (a) Borrower filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which Borrower colludes with, or otherwise assists such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (c) Borrower filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) Borrower consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; or (e) Borrower making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (ii) if the first full monthly payment of interest on the Note is not paid when due; ; (iii) if Borrower fails to maintain its status as a Single Purpose Entity, after the Guaranty Notice (as defined in the Guaranty of Recourse Carveouts) if Borrower fails to permit on-site inspections of the Property, fails to provide financial information, or fails to appoint a new property manager upon the request of Lender as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Mortgage; (iv) if Borrower fails to obtain Lender's prior written consent to any Indebtedness or voluntary Lien encumbering the Property; or (v) if Borrower fails to obtain Lender's prior written consent to any Transfer as required by this Agreement or the Mortgage.

Section 9.4 **Intentionally Omitted.**

Section 9.5 **Servicer.** At the option of Lender, the Loan may be serviced by a servicer/trustee (any such servicer/trustee, together with its agents, nominees or designees, are collectively referred to as "**Servicer**") selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a servicing agreement (the "**Servicing Agreement**") between Lender and Servicer. Borrower shall not be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement or the monthly servicing fee due to Servicer under the Servicing Agreement; provided, however, that Borrower shall be responsible for expenses incurred by Lender or Servicer as set forth in **Section 10.13** hereof.

ARTICLE X.

MISCELLANEOUS

Section 10.1 **Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 **Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 **Governing Law.**

(B) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON

CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

National Registered Agents, Inc.
875 Avenue of the Americas, Suite 501
New York, New York 10001

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

with a copy to: Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.
Facsimile No.: (212) 808-7897

If to Borrower: P/A-Acadia Pelham Manor, LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq., General Counsel
Facsimile No.: (914) 288-2162

If to MERS: MERS Commercial
P.O. Box 2300
Flint, Michigan 48501-2300

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 **Trial by Jury.**

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN

KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 **Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 **Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.12 **Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 **Expenses; Indemnity.** (1) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred

by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(a) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum

portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(b) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 **Schedules and Exhibits Incorporated.** The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 **Offsets, Counterclaims and Defenses.** Any assignee of Lender's interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 **No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 **Publicity.** All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 **Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 **Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 **Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders, in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this **Section 10.21** shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 **Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated August 9,

2007 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 **Joint and Several Liability**. If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

Section 10.24 **Certain Additional Rights of Lender (VCOC)**. Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, **Section 5.1.11** hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property and/or construction of the Project Improvements).

The rights described above in this **Section 10.24** may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 **MERS**. Mortgage Electronic Registration Systems, Inc., a Delaware corporation ("MERS"), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Mortgage and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to "Mortgagee" shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

[SIGNATURE PAGE TO BUILDING LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER

P/A-ACADIA PELHAM MANOR, LLC,
a Delaware limited liability company

By: _____,
Name: Robert Masters
Title: Senior Vice President

LENDER

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a
New York corporation

By: _____
Name:
Title: Authorized Signatory

PROJECT LOAN AGREEMENT

Dated as of December 26, 2007

Between

ACADIA ATLANTIC AVENUE LLC,
as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
as Lender

MERS MIN: 8000101-000007166-1

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PROJECT LOAN AGREEMENT

THIS PROJECT LOAN AGREEMENT, dated as of December 26, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**” or sometimes, this “**Project Loan Agreement**”), is made by and between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (“**Lender**”) and **ACADIA ATLANTIC AVENUE LLC**, a Delaware limited liability company, having its principal place of business c/o Acadia Realty Trust, 1311 Mamaroneck Avenue — Suite 260, White Plains, New York 10605 (“**Borrower**”).

WITNESSETH:

WHEREAS, Borrower desires to obtain the Project Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Project Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I.

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent, all capitalized terms used herein but not otherwise defined shall have their respective meanings set forth in the Building Loan Agreement and:

“**Advance**” or “**Advances**” shall mean any disbursement of the proceeds of the Project Loan by Lender pursuant to the terms of this Agreement.

“**Agreement**” shall mean this Project Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Borrower**” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“**Building Loan**” shall mean the loan made by Lender to Borrower pursuant to the Building Loan Agreement in the principal amount of up to the Building Loan Amount.

“**Building Loan Agreement**” shall mean that certain Building Loan Agreement dated as of the date hereof between Borrower and Lender as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Building Loan Amount**” shall have the meaning set forth in the Building Loan Agreement.

“**Building Loan Assignment of Leases**” shall have the meaning set forth in the Building Loan Agreement.

“**Building Loan Documents**” shall have the meaning set forth in the Building Loan Agreement.

“**Building Loan Earn Out Advance**” shall have the meaning set forth in Section 2.12.2 hereof.

“**Building Loan Mortgage**” shall have the meaning set forth in the Building Loan Agreement.

“**Building Loan Note**” shall have the meaning set forth in the Building Loan Agreement.

“**Contingency Excess**” shall have the meaning set forth in Section 2.1.7(b) hereof.

“**Debt**” shall mean the outstanding principal amount of the Project Loan set forth in, and evidenced by, this Agreement, the Project Loan Note and the other Project Loan Documents, together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Project Loan under the Project Loan Note, this Agreement, the Project Loan Mortgage or any other Project Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, the aggregate scheduled principal and interest payments due under this Agreement and the Project Loan Note.

“**Defeasance Date**” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

“**Defeasance Event**” shall have the meaning set forth in Section 2.5.1(a) hereof.

“**Earn Out Advances**” shall have the meaning set forth in Section 2.12.2 hereof.

“**Event of Default**” shall have the meaning set forth in Section 8.1(a) hereof.

“**Final Advance**” shall have the meaning set forth in Section 2.12.1 hereof.

“**Final Building Loan Advance**” shall mean the Final Advance as defined in Section 2.12.1 of the Building Loan Agreement.

“Indemnified Liabilities” shall have the meaning set forth in **Section 10.13(a)** hereof.

“Initial Advance” shall have the meaning set forth in **Section 2.10** hereof.

“Initial Advance Conditions” shall have the meaning set forth in **Section 2.10** hereof.

“Interest Period” shall mean: (a) the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs, both dates inclusive; and (b) the period commencing on and including the first day of each calendar month thereafter during the term of Loan and ending and including the last day of such calendar month.

“Interest Rate” shall mean seven and one hundred forty-four one-thousandths percent (7.144%), provided, however, in the event that on or before January 1, 2011, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.0 using a debt service constant of 7.50%, and Borrower delivers to Lender a MAI appraisal performed, at Borrower’s sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender’s internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 75% assuming a fully advanced Loan, Lender shall, upon Borrower’s written request, reduce the Interest Rate to a per annum rate equal to five and seven hundred ninety-four one-thousandths percent (5.794%), commencing on the first Payment Date after Borrower’s request. Any reduction in the Interest Rate as set forth above shall be effective commencing on the first Payment Date after Borrower’s request for such reduction and satisfaction of the conditions set forth above and no reduction in the Interest Rate shall be retroactive. In the event that Borrower fails to satisfy the conditions for a reduction of the Interest Rate within the time periods set forth above, time being of the essence, Borrower shall have no further right to obtain a reduction in the Interest Rate. Notwithstanding anything to the contrary contained herein, Lender shall have the right, in its sole discretion, at any time after the expiration of the Construction Term and prior to a Securitization of the Loan, to increase the Interest Rate by up to two-tenths of one percent (0.20%).

“Interest Reserve Line Item” shall mean the interest reserve Line Item of the Project Loan Budget.

“Lender” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

“Loan” shall mean collectively, the Building Loan and the Project Loan.

“Loan Agreement” shall mean collectively, this Project Loan Agreement and the Building Loan Agreement.

“Loan Documents” shall mean collectively, the Building Loan Documents and the Project Loan Documents, the Environmental Indemnity, the Guaranty of Completion, the

Guaranty of Recourse Carveouts, the Cash Management Agreement, the Clearing Account Agreement, the Assignment of Contracts, the Administration Fee Agreement, the Rate Lock Agreement and all other documents executed and/or delivered in connection with the Loan.

“**Maturity Date**” shall mean January 1, 2020 or such earlier date on which the final payment of principal of the Project Loan Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“**MERS**” shall have the meaning set forth in **Section 10.25** hereof.

“**Monthly Debt Service Payment Amount**” shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with **Section 2.2** hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in January, 2015, and (b) a constant monthly payment of \$33,215.06 commencing with the Payment Date occurring in February, 2015 and on each Payment Date thereafter, provided, however, that in the event that the Interest Rate is modified in accordance with the provisions of the definition of “Interest Rate,” the Monthly Debt Service Payment Amount shall be adjusted by Lender based upon the modified Interest Rate and a thirty (30) year amortization schedule, Lender’s determination of the Monthly Debt Service Payment Amount being binding absent manifest error.

“**Open Period Date**” shall have the meaning set forth in **Section 2.4.1** hereof.

“**Other Debt**” shall mean the “**Debt**” as defined in both the Building Loan Agreement and the Mezzanine Loan Documents, if applicable.

“**Other Obligations**” shall have the meaning as set forth in the Mortgage.

“**Payment Date**” shall mean February 1, 2008, and the 1st day of every month thereafter during the term of the Loan until and including the Maturity Date or, if such day is not a Business Day, the immediately preceding Business Day.

“**Prepayment Date**” shall have the meaning set forth in **Section 2.4.4** hereof.

“**Project Loan**” shall mean the loan being made by Lender to Borrower pursuant to this Project Loan Agreement in the principal amount of up to the Project Loan Amount.

“**Project Loan Amount**” shall mean Four Million, Nine Hundred Twenty Thousand, Seven Hundred Thirty-Nine and 67/100 Dollars (\$4,920,739.67).

“**Project Loan Assignment of Leases**” shall mean that certain Project Loan Assignment of Leases and Rents, dated the date hereof, from Borrower, as assignor, to Lender, as assignee, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Project Loan Documents**” shall mean, collectively, this Agreement, the Project Loan Note, the Project Loan Mortgage, the Project Loan Assignment of Lease as well as all other documents not or hereafter executed and/or delivered with respect to the Project Loan.

“**Project Loan Earn Out Advance**” shall have the meaning set forth in **Section 2.12.2** hereof.

“**Project Loan Mortgage**” shall mean that certain Project Loan Mortgage and Security Agreement dated the date hereof, executed and delivered by Borrower to Lender as security for the Project Loan and encumbering the Property, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Project Loan Note**” shall mean that certain Project Loan Promissory Note, dated the date hereof, in the principal amount of up to the Project Loan Amount made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Required Equity Funds**” shall have the meaning set forth in **Section 2.11.13**.

“**Scheduled Defeasance Payments**” shall have the meaning set forth in **Section 2.5.1(b)** hereof.

“**Security Agreement**” shall have the meaning set forth in **Section 2.5.1(a)(y)** hereof.

“**Severed Loan Documents**” shall have the meaning set forth in **Section 8.2(c)**, hereof.

“**Shortfall**” shall have the meaning set forth in **Section 2.1.10** hereof.

“**Successor Borrower**” shall have the meaning set forth in **Section 2.5.3** hereof.

“**Unsatisfied Initial Advance Conditions**” shall have the meaning set forth in **Section 2.1.20**.

Section 1.2 **Principles of Construction.**

(a) All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Any reference in this Agreement or in any other Loan Document to any Loan Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution therefor). Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

(b) With respect to any cross-reference to the Building Loan Documents or the Project Loan Documents or any combination thereof, as the case may be, for terms defined therein or provisions set forth therein or Schedules or Exhibits thereto, such cross-references

shall be to referenced defined terms or provisions or Schedules or Exhibits, as the case may be, as the same are set forth in the Building Loan Documents or the Project Loan Documents or any combination thereof, as the case may be, as of the date hereof, and as the same may be amended, modified, supplemented, extended, replaced or restated or any combination thereof from time to time, and shall survive the repayment or satisfaction of the Building Loan or the Project Loan as the case may be, or the termination of the Building Loan Agreement or this Agreement or any combination thereof, as the case may be, for so long as the Project Loan remains outstanding.

ARTICLE II. GENERAL TERMS

Section 2.1 **Loan Commitment; Disbursement to Borrower.**

2.1.1 **Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept Advances in respect of the Project Loan as more particularly set forth in **Section 2.10.**

2.1.2 **No Reborrowings.** Any amount borrowed and repaid hereunder in respect of the Building Loan may not be reborrowed.

2.1.3 **The Note, Mortgage and Loan Documents.** The Project Loan shall be evidenced by the Project Loan Note and secured by the Project Loan Mortgage, the Project Loan Assignment of Leases and the other Project Loan Documents.

2.1.4 **Use of Proceeds.** Borrower hereby agrees that Borrower shall use the proceeds of the Project Loan to pay or reimburse itself for Project-Loan Costs actually incurred in connection with the construction of the Project Improvements if and to the extent that such Project-Loan Costs are reflected in the Project Loan Budget, subject to reallocation pursuant to **Sections 2.1.6** and **2.1.7** hereof, and **5.1.33** of the Building Loan Agreement (or other reallocations approved by Lender in its sole discretion).

2.1.5 **Advances.** The Project Loan Budget shall reflect, by category and line item, the purposes and amounts for which funds to be advanced by Lender under this Agreement are to be used. Lender shall not be required to Advance funds hereunder for any category or line item of Project Loan Costs in excess of the amount specified for such line item or category in the Project Loan Budget, subject to **Sections 2.1.6** and **2.1.7** hereof and **5.1.33** of the Building Loan Agreement (or other reallocations approved by Lender in its sole discretion). No Advances shall be made to pay for Affiliate Fees.

2.1.6 **Cost Overruns.** If Borrower becomes aware of any change in actual or projected Project Loan Costs which will increase any one or more category or line item of costs reflected in the Project Loan Budget, Borrower shall immediately notify Lender in writing and promptly submit to Lender for its approval a revised Project Loan Budget. Any reallocation of any category or line items in the Project Loan Budget in connection with cost overruns shall be subject to Lender's approval in Lender's sole discretion except as set forth in **Sections 2.1.7** hereof and **5.1.33** of the Building Loan Agreement, provided, however, under no circumstances shall Borrower be permitted, or Lender obligated to approve, the reallocation of line items from

the Building Loan Budget to the Project Loan Budget. Lender shall have no obligation to make any further Advances unless and until the revised Project Loan Budget so submitted by Borrower is approved by Lender and Borrower has satisfied its obligations with respect to any resulting Shortfall under **Section 2.1.10**. Lender reserves the right to approve or disapprove any revised Project Loan Budget in its sole and absolute discretion (except with respect to reallocations in accordance with **Sections 2.1.7** and **5.1.33**).

2.1.7 *Contingency Reserve.*

(a) Following the satisfaction of the Initial Advance Conditions, and subject to the prior approval of Lender in its sole discretion, Borrower may revise the Project Loan Budget to move amounts available under any Line Item that are designated to "Contingency" to other Line Items in the Project Loan Budget. In no event may the Contingency Line Item of the Building Loan Budget be reallocated to any Line Item in the Project Loan Budget. Provided no Event of Default exists and with Lender's consent (which shall not be unreasonably withheld), after Completion of the Improvements, Borrower may draw amounts available under the Contingency Line Item of the Project Loan Budget to fund Shortfalls in monthly interest due, which amounts shall be deposited in the Interest Reserve. Such drawing shall be in addition to any Interest Reserve Line Item advanced under the Project Loan pursuant to **Section 2.14.10** hereof.

(b) Following the occurrence of Final Completion, Lender shall reasonably cooperate with Borrower to amend the Project Loan Budget, Building Loan Budget, Project Loan Documents and Building Loan Documents such that: (x) the Building Loan Budget is amended to remove the amounts then available under the Building Loan Budget either in the contingency Line Item or as cost savings from other Line Items (the "**Contingency Excess**") and the Building Loan Amount is reduced by the Contingency Excess; and (y) the contingency line item of the Project Loan Budget and the Project Loan Amount are increased by the Contingency Excess. Borrower and Lender shall execute and deliver such documents, certificates and instruments as may be reasonably required to effect the above described re-allocation, including, without limitation, the filing of an amended Section 22 Affidavit and the modification of the Project Loan Documents and Building Loan Documents to reflect the respective changes in the Project Loan Amount and the Building Loan Amount and Borrower shall obtain such other evidence as Lender may reasonably request to confirm that none of the foregoing shall adversely impact the validity or priority of its security interests in the Property or otherwise adversely impact its rights and remedies under the Loan Documents including, without limitation, appropriate endorsements to the title insurance policy. Borrower shall pay any and all title insurance, recording and other charges and all reasonable costs and expenses (including legal fees) incurred by Lender in connection with the foregoing.

2.1.8 *Intentionally Omitted.*

2.1.9 *Amount of Advances.* In no event shall any Advance exceed the full amount of Project Loan Costs theretofore paid or to be paid with the proceeds of such Advance plus any Project Loan Costs incurred by Borrower through the date of the Draw Request for such Advance minus (i) the applicable Retainage for each Contract and Subcontract, and (ii) the aggregate amount of any Advances previously made by Lender. It is further understood that the

Retainage described above is intended to provide a contingency fund protecting Lender against failure of Borrower or Guarantor to fulfill any obligations under the Loan Documents, and that Lender may charge amounts to pay for Project Loan Costs against such Retainage in the event Lender is required or elects to expend funds to cure any Default or Event of Default, in either instance, in accordance with the terms of this Agreement. No Advance of the Loan by Lender shall be deemed to be an approval or acceptance by the Lender of any work performed thereon or the materials furnished with respect thereto.

2.1.10 Loan-In-Balance. As used herein, a “**Shortfall**” shall mean, as to any Line Item in the Development Budget as of any date, the amount determined by Lender, in Lender’s sole but reasonable judgment, by which (A) the cost of completing or satisfying such Line Item, exceeds (B) the remaining undisbursed portion of the Loan allocated to such Line Item in the Development Budget plus any sums deposited with Lender pursuant to this **Section 2.1.10** to pay for such Line Item and not previously disbursed plus any Reserve Funds to the extent such Reserve Funds are available hereunder for the payment of such Line Item. From time to time and at any time during the Construction Period, Lender shall have the right, but not the obligation, to notify Borrower that it has determined a Shortfall exists as to any one or more Line Items. If Lender at any time shall so notify Borrower, Borrower shall, at its option within five (5) days of Lender’s notification as aforesaid, either: (i) deposit with Lender an amount equal to such Shortfall, which Lender disburse to Borrower to the satisfaction of the costs of such Line Item prior to advancing any further Loan proceeds on account of such costs; (ii) post an irrevocable standby Letter of Credit in the amount of such Shortfall, in favor of Lender; (iii) to the extent permitted under **Sections 2.1.7** hereof and **5.1.33** of the Building Loan Agreement, and following the satisfaction of the Initial Advance Conditions allocate the Contingency Reserve, with respect to the Line Item(s) in question, to the Shortfall, and provided, further that the amount of the remaining Contingency Reserve for such Line Item(s) (following the allocation to the Shortfall) is sufficient for such Line Item(s), as determined by Lender in its sole discretion; and (iv) to the extent permitted under **Section 5.1.33** of the Building Loan Agreement, and then only following the satisfaction of the Initial Advance Conditions, reallocate cost savings from the Development Budget in respect of the Loan (or other reallocations which are approved by Lender, in its sole discretion) in accordance with the terms of this Agreement, but only to the extent such cost savings can be allocated to the related Line Items. Borrower hereby agrees that Lender shall have a lien on and security interest in, for the benefit of Lender, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid costs as approved by Lender. Lender shall have no obligation to make any further Advances of proceeds of the Loan as to any Line Item until the sums required to be deposited pursuant to clause (i) above as to such Line Item have been exhausted, or until Borrower has posted an irrevocable standby Letter of Credit pursuant to clause (iii) above, as the case may be, and, in any such case, the Loan is back “in balance”. Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Lender reasonably determines that the amount thereof is more than the excess, if any, of the remaining Project-Related Costs over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, Lender, in its sole discretion, may apply such amounts either to the remaining Project-Related Costs or to the immediate reduction of outstanding principal and/or interest under the Note.

2.1.11 Quality of Work. No Advance or any portion thereof shall be made with respect to defective work or to any contractor that has performed work that is defective and that has not been cured, as confirmed by the report of the Construction Consultant, but Lender may disburse all or part of any Advance before the sum shall become due if Lender believes it advisable to do so, and all such Advances or parts thereof shall be deemed to have been made pursuant to this Agreement.

2.1.12 Required Equity Funds. All Required Equity Funds shall be contributed (*i.e.*, expended by Borrower and invested by Borrower in the Property, for Project Related Costs set forth on the approved Development Budget) before the Closing Date.

2.1.13 Trust Fund. Pursuant to Section 13 of the New York Lien Law, Borrower shall receive the Advances hereunder and shall hold the right to receive the Advances as a trust fund to be applied first for the purpose of paying the Costs of the Improvements and shall apply the Advances first to the payment of the Cost of the Improvements on the Property before using any part of the total of the same for any other purpose.

2.1.14 Final Project Report and Development Budget. The provisions of Section 2.1.14 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein.

2.1.15 Miscellaneous.

(a) The making of an Advance by Lender shall not constitute Lender's approval or acceptance of the construction theretofore completed. Lender's inspection and approval of the Plans and Specifications, the construction of the Project Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the sole obligation of Lender as the result of such inspection and approval being to make the Advances if and to the extent, required by this Agreement.

(b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT LENDER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE NEW YORK LIEN LAW PROVIDES THAT "NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE LENDER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER," AND LENDER DOES NOT IMPOSE SUCH AN OBLIGATION ON ITSELF.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below.

2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance.

2.2.3 Default Rate In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 Usury Savings. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 Loan Payment.

2.3.1 Monthly Debt Service Payments. Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from and including the Closing Date up to and including December 31, 2007, which interest shall be calculated in accordance with the provisions of Section 2.2 hereof, and (b) on each Payment Date commencing on the Payment Date occurring in February, 2008, and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest due for the related Interest Period at the Interest Rate, for such related Interest Period and then to the principal amount of the Loan due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto. Borrower and Lender acknowledge and agree that, on the 15th calendar day of the month preceding each Payment Date during the Construction Term: (a) if and to the extent undrawn funds remain available for Advance under the Project Loan from the Interest Reserve Line Item of the Project Loan Budget, and provided that that no Event of Default or monetary Default then exists under any of the Loan Documents or would occur as a result of such Advance, the Monthly Debt Service Amount then due and owing shall be advanced by Lender by a Advance under Interest Reserve Line Item of the Project Loan Budget; and (b) if no amount remains available under the Interest Reserve Line

Item but and to the extent Interest Reserve Funds are on deposit in the Interest Reserve Account, and no Event of Default or monetary Default then exists under any of the Loan Documents, the Monthly Debt Service Payment Amount then due and payable shall be paid by application of funds from the Interest Reserve Account. Borrower and Lender acknowledge and agree that Lender may automatically make an Advance or apply Interest Reserve Funds on deposit in the Interest Reserve Account on each Payment Date occurring during the Construction Term, in either instance, in accordance with this **Section 2.3.1**, without the need for Borrower to submit a Draw Request or otherwise request such an Advance or application.

2.3.2 *Payments Generally*. The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2007. Thereafter each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 *Payment on Maturity Date*. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 *Late Payment Charge*. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 *Method and Place of Payment*. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 **Prepayments**.

2.4.1 *Voluntary Prepayments*. Except as otherwise provided in this **Section 2.4.1** and **Section 2.4.2**, Borrower shall not have the right to prepay the Loan in whole or in part

prior to the Maturity Date. If for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date three (3) months prior to the Maturity Date (the “**Open Period Date**”), or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part, without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to **Section 6.4** of the Building Loan Agreement, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; *provided, however*, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this **Section 2.4.2**.

2.4.3 Prepayments After Default. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in **Section 2.4.1** hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 Prepayment Prior to Defeasance Expiration Date. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a “**Prepayment Date**”) provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. If for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment.

2.4.5 Application of Prepayments to Components. Any prepayment of the principal of the Loan, in whole or in part, voluntary or involuntary, shall be applied (a) first, to the reduction of the outstanding principal balance of the Project Loan until reduced to zero, and (b) second, to the reduction of the outstanding principal balance of the Building Loan until

reduced to zero. Subsequent to any Event of Default, any payment of principal from whatever source may be applied by Lender between the various components of the Loan in Lender's sole discretion.

Section 2.5 **Defeasance.**

2.5.1 **Voluntary Defeasance** (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntary prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a "**Defeasance Event**");

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the "**Defeasance Date**") on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iv) Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with Section 2.5.1(b) below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this **Section 2.5** (the "**Security Agreement**");

(vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code as a result of such Defeasance Event;

(vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this **Section 2.5.1(a)** have been satisfied;

(ix) Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in **Section 2.6** hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Open Period Date (the "**Scheduled Defeasance Payments**"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Clearing Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this **Section 2.5** and satisfy Borrower's other obligations under this **Section 2.5** and **Section 2.6** shall be remitted to Borrower.

2.5.2 *Collateral*. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 *Successor Borrower*. In connection with any Defeasance Event, Borrower shall establish a successor entity (the “**Successor Borrower**”), which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this **Section 2.5.3**, but Borrower shall pay all costs and expenses incurred by Lender, including Lender’s attorneys’ fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 **Release of Property**. Except as set forth in this **Section 2.6**, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 *Release of Property*.

(a) If Borrower has elected to defease the Loan and the requirements of **Section 2.5** and this **Section 2.6** have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer’s Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 Release on Payment in Full. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 Clearing Account/Cash Management. The provisions of Section 2.7 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein

Section 2.8 Intentionally Omitted.

Section 2.9 Payments Not Conditional. All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.10 Initial Advance The obligation of Lender to make the initial Advance of the Project Loan (the "**Initial Advance**") shall be subject to the following conditions precedent (collectively, the "**Initial Advance Conditions**") on or prior to the Required Initial Advance Date, all of which conditions precedent must be satisfied prior to Lender making any such Initial Advance:

2.10.1 Prior Conditions Satisfied. All conditions precedent to closing shall continue to be satisfied as of the date of the Initial Advance (in the same manner in which they were satisfied for the closing without reimposing any one-time condition).

2.10.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Initial Advance, and on the date of such Initial Advance there shall exist no Default or Event of Default.

2.10.3 Representations and Warranties. The representations and warranties made by Borrower or Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of the Initial Advance.

2.10.4 No Damage. The Project Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall be satisfied that sufficient insurance proceeds will be available in the reasonable judgment of Lender to effect the satisfactory restoration of the Project Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.10.5 Deliveries. Lender shall have received:

- (a) Draw Request. A Draw Request complying with the requirements hereof;
- (b) Intentionally Omitted;

(c) Title Insurance Policy. A Title Insurance Policy for the full amount of the Loan, which includes a pending disbursement clause to increase the coverage of the Title Insurance Policy by the amount of the any Advance, insuring the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances;

(d) Lien Waivers. Duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form set forth in Exhibit J to the Building Loan Agreement from the General Contractor and all Contractors and Subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for such work or labor and/or materials for which payment thereof is requested, as to which duly executed lien waivers shall be delivered to Lender with the next request for an Advance;

(e) Ratios. Evidence satisfactory to Lender that following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 75%.

(f) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents;

(g) Anticipated Costs Report. An Anticipated Costs Report; and

(h) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.6 Initial Building Loan Advance. All conditions to the initial advance of the Building Loan set forth in Section 2.10 of the Building Loan Agreement shall have been satisfied.

2.10.7 Rate Lock Agreement. Simultaneously with the Initial Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Initial Advance bears to the Total Loan Amount.

2.10.8 Initial Reserve Deposits Borrower shall have deposited the Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit with Lender. The Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit shall be funded on the date of the Initial Advance with a portion of the Initial Advance under the Project Loan.

2.10.9 Satisfaction of Initial Advance Conditions. . Borrower acknowledge that certain Initial Advance Conditions, including, without limitation, [SUBJECT TO REVIEW BY LENDER] [(i) delivery to and approval by Lender of final Plans and Specifications, (ii) delivery to and approval by Lender of the final Development Budget, Building Loan Budget, and Project Loan Budget, (iii) delivery to Lender of all permits required for the demolition of the existing improvements on the Property, (iv) delivery to Lender of evidence that Borrower maintains the Policies required under this Agreement, and (v) delivery to Lender of Borrower's Requisition and

all required accompanying documents with respect to the Initial Advance in accordance with **Section 2.14.1** of this Agreement (the “**Unsatisfied Initial Advance Conditions**”). Borrower covenants and agrees that, prior to the Required Initial Advance Date, time being of the essence, it shall cause all of the Initial Advance Conditions, including, without limitation, the Unsatisfied Initial Advance Conditions, to be satisfied. Borrower shall not perform any work at the Property, including, without limitation, any demolition of the existing improvements, until all of the Initial Advance Conditions have been satisfied. Borrower’s failure to satisfy, or cause the satisfaction of, any of the Initial Advance Conditions on or prior to the Required Initial Advance Date shall, at Lender’s election, constitute an Event of Default. In addition to any and all other remedies that may be available to Lender hereunder, under the other Loan Documents, at law or in equity, upon the occurrence of an Event of Default resulting from the failure of any Initial Advance Condition to have been satisfied, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, with full power of substitution to complete or undertake such steps as may be necessary, in Lender’s sole determination, to satisfy the Initial Advance Condition in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Initial Advance Conditions, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the Project; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement and the other Loan Documents. In addition, upon such Event of Default, Lender shall have the right to unwind any interest rate hedge entered into by Lender and apply any deposits or other amounts held by Lender pursuant to the Rate Lock Agreement to costs and expenses incurred by Lender under this Agreement, the Rate Lock Agreement or any of the other Loan Documents.

2.10.10 **Government Approvals.** Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the demolition of the existing improvements as contemplated by the Plans and Specifications, have been obtained and are in full force and effect.

Section 2.11 **Project Loan Advances.** The obligation of Lender to make the Advances of the Project Loan after the Initial Advance shall be subject to the following conditions precedent, all of which conditions precedent must be satisfied prior to Lender making any such Advance:

2.11.1 **Prior Conditions Satisfied.** All conditions precedent to any prior Advance (in the same manner in which they were satisfied for the Initial Advance or prior Advance, as applicable, and without reimposing any one-time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

2.11.2 **Performance; No Default.** Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to

the date of such Advance, and on the date of such Advance there shall exist no Default or Event of Default or Shortfall.

2.11.3 Representations and Warranties. The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Advance.

2.11.4 No Damage. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall have received insurance proceeds sufficient in the reasonable judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.11.5 Deliveries. The following items or documents shall have been delivered to Lender:

(a) Anticipated Costs Report. An Anticipated Costs Report in the form set forth in **Exhibit I** to the Building Loan Agreement executed by the General Contractor which sets forth the anticipated costs to complete construction of the Project Improvements, after giving effect to costs incurred during the previous month and any anticipated change orders;

(b) Endorsement to Title Insurance Policy. A “datedown” endorsement to Lender’s title insurance policy as described in the form set forth in **Exhibit C** to the Building Loan Agreement which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender;

(c) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents.

(d) Draw Request. A Draw Request complying with the provisions of this Agreement which shall constitute Borrower’s representation and warranty to Lender that: (a) any completed construction is substantially in accordance with the Plans and Specifications, (b) all costs for the payment of which Lender have previously advanced funds have in fact been paid, (c) all the representations and warranties contained in Article IV of this Agreement continue to be true and correct in all material respects, (d) no Event of Default shall have occurred and be continuing hereunder, and (e) Borrower continues to be in compliance in all respects with all of the other terms, covenants and conditions contained in this Agreement.

(e) Affirmation of Payment. General Contractor's Affirmation of Payment (AIA Form G706) in the form attached as **Exhibit E** to the Building Loan Agreement.

(f) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.11.6 Construction Consultant Certificate. Each draw request relating to Hard Costs shall be accompanied by a certificate or report of the Construction Consultant to Lender based upon a site observation of the Property made by the Construction Consultant not more than thirty (30) days prior to the date of such draw, in which the Construction Consultant shall in substance: (i) verify that the portion of the Project Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications; and (ii) state its estimate of (1) the percentages of the construction of the Project Improvements completed as of the date of such site observation on the basis of work in place as part of the Project Improvements and the Building Loan Budget, (2) the Hard Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (3) the sum necessary to complete construction of the Project Improvements in accordance with the Plans and Specifications, and (4) the amount of time from the date of such inspection that will be required to achieve Completion of the Improvements.

2.11.8 Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

2.11.9 Lien Waivers. Borrower shall have delivered duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as applicable, and otherwise substantially in the form set forth as **Exhibit J** to the Building Loan Agreement, from the General Contractor, all Major Contractors and Major Subcontractors for all work performed, and all labor or material supplied for which payment thereof has been made prior to the date of the Advance.

2.11.10 Construction Consultant Approval. Lender has received advice from the Construction Consultant, satisfactory to Lender, as to Construction Consultant's determination, acting seasonably, based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower's Requisition of the value of the labor and materials in place, that the construction of the Project Improvements is proceeding satisfactorily and according to schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Construction Consultant's satisfaction and substantially in accordance with the Plans and Specifications.

2.11.11 Ratios. Following such Advance (and any Building Loan Advance being made on such date), the Loan-to-Cost Ratio shall be no greater than 75%.

2.11.12 Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

2.11.13 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of each Advance, Borrower has invested Cash equity in an amount equal to or greater than (a) \$5,356,660.00 or (b) 25% of the Total Project Costs or (c) the difference between the Development Budget and the maximum Loan amount of \$16,150,000.00 for approved Project-Related Costs (the "**Required Equity Funds**"). Notwithstanding the foregoing, if the Borrower realizes cost savings from the development of the Project, either in the form of Hard Costs or Soft Costs, Advances may be advanced to Borrower provided that (i) the Borrower would not have less than \$5,356,660.00 of cash equity in the Project through such Advance and (ii) the Debt Service Coverage Ratio shall be equal to or greater than 1.70 to 1.0 assuming a fully advanced Loan using a debt service constant of 7.50%, (iii) the Debt Service Coverage Ratio shall be equal to or greater than 1.20 to 1.0 assuming a fully advanced Loan using a debt service constant of 10.65%, and (iv) the loan-to-value ratio for the Property is greater than 75% assuming a fully advanced Loan. If Borrower is in non-compliance solely with respect to condition (i) above, at Borrower's option, either (A) any excess cost savings (funds in excess of the amount so that the Required Equity Funds shall continue to be satisfied) shall be deposited as follows: (1) 100% into the Replacement Reserve Account, or (2) at Lender's discretion, into any other Reserves required by Lender pursuant to this Agreement, or (B) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement. If Borrower is in compliance with respect to condition (i) above but is not in compliance with conditions (ii), (iii) and (iv) above, any excess cost savings shall, at Borrower's option, (A) be held back by Lender as additional collateral for the Loan until satisfaction of each of the requirements are satisfied, or (B) be deposited as follows: (1) 100% into the Replacement Reserve Account, or (2) at Lender's discretion, into any other Reserves required by Lender pursuant to this Agreement, or (C) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement.

2.11.14 Rate Lock Agreement. Simultaneously with each Construction Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Construction Advance bears to the Total Loan Amount, provided, however, that in the event that any of the conditions of Section 2.11.13 are not satisfied, Lender shall have the right to apply the portion of the deposit under the Rate Lock Agreement to be returned to Borrower to satisfy the conditions of Section 2.11.13.

2.11.15 Government Approvals. Lender shall not be required to make Construction Advances for any phase of the construction of the Project Improvements unless and until Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the construction of the phase of the Project

Improvements to be constructed by Borrower as contemplated by the Plans and Specifications have been obtained and are in full force and effect, including, without limitation, the final approval of the Plans and Specifications by the City of New York for the Project Improvements and a building permit(s) covering the entire scope of work contemplated by the Project Improvements in accordance with the approved Plans and Specification “lawfully issued” to Borrower within the meaning of Section 11-31(a) of the Zoning Resolution of the City of New York (the “**Zoning Resolution**”).

Section 2.12 **Final Advance**.

2.12.1 *Conditions to Release of Final Advance*. In addition to the conditions set forth in **Section 2.10** and **Section 2.11**, above, Lender’s obligation to make the final Advance in the amount calculated pursuant to **Section 2.12.2** of this Agreement (the “**Final Advance**”) shall be subject to receipt by Lender of the following:

(a) **Completion of Improvements**. Evidence satisfactory to Lender and the Construction Consultant that the Completion of the Improvements has occurred.

(b) **Final Building Loan Advance**. All conditions to the Final Building Loan Advance have been satisfied and the Final Building Loan Advance shall have been made or will be made simultaneously therewith.

(c) **Lien Waivers**. Duly executed final lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form as **Exhibit J** to the Building Loan Agreement from the General Contractor and Major Contractors and Major Subcontractors who have performed work for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied.

(d) **“As-Built” Plans and Specifications**. A full and complete set of “as built” Plans and Specifications certified to by Borrower’s Architect.

(e) **Administration Fee**. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

(f) **Certificates**. Completed AIA Form G704 (Certificate of Substantial Completion) and completed AIA Form G707 (Consent of Surety to Final Payments) shall have been executed and delivered by Borrower’s Architect, General Contractor and each surety issuing any of the Required Construction Bonds. .

(g) **Deposits to Reserves**. All deposits to the Reserve Funds required under the Building Loan Agreement have been made.

(h) **Other Documents**. Such documents, letters, affidavits, reports and assurances, as Lender, Lender’s counsel and the Construction Consultant may reasonably require.

(i) Required Ratios at Completion. Lender shall have determined that, following the Final Advance (and taking into consideration the Final Building Loan Advance to be made simultaneously under the Building Loan) the Required Ratios at Completion have been satisfied, or Borrower shall have deposited with Lender Cash or a Letter of Credit to satisfy the Required Ratios at Completion in accordance with Section 2.12.2.

(j) Tenant Estoppel Certificates. Borrower shall have delivered to Lender estoppel certificates from all of the tenants at the Property in form and substance satisfactory to Lender.

(k) Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of the Final Advance, Borrower has invested Cash equity in an amount equal to or greater than the Required Equity Funds or has otherwise complied with the provisions of Section 2.11.13 with respect thereto.

(l) Insolvency Opinion. The issuance of and delivery to Lender of six (6) original counterparty Insolvency Opinions in the form attached hereto as Exhibit K to the Building Loan Agreement from Wachtel & Masyr, LLP or another law firm reasonably acceptable to Lender.

(m) ICIP Eligibility. Evidence satisfactory to Lender that Borrower has obtained a Certificate of Eligibility under the Industrial and Commercial Incentive Program.

2.12.2 Amount of Final Advance. Except as expressly provided for below, the amount of the Final Advance shall be equal to the sum of: (a) any Retainage not previously released and advanced to Borrower; plus (b) the amount of any Punch List and Deferred Maintenance Reserve Deposit not funded pursuant to the Building Loan Agreement; plus (c) the positive difference, if any, between, (i) the Building Loan Amount and (ii) all amounts previously Advanced under the Building Loan (including the amounts described in clauses (a) and (b) of the sentence). The portion of the Final Advance described in clause (c) of the foregoing sentence is referred to herein as the “**Project Loan Earn Out Advance**” and the corresponding portion of the Final Building Loan Advance is referred to herein as the “**Building Loan Earn Out Advance**” and together with the Project Loan Earn Out Advance, the “**Earn Out Advances**”. Notwithstanding anything to the contrary provided for herein, the Earn Out Advances shall be reduced, pro rata, but not below \$0.00, if and to the extent necessary for the Required Ratios at Completion to be achieved following the Final Advances. In addition, if the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00, Lender shall have the right, but not the obligation, to apply any deposits held by Lender pursuant to the Rate Lock Agreement and any Interest Reserve Funds to the payment of the Building Loan and the Project Loan in such order and priority as Lender shall determine in its sole discretion. If the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00 and the deposits, if any under the Rate Lock Agreement and the Interest Reserve Funds are applied to the payment of the Loan, Borrower shall deposit with Lender Cash or a Letter of Credit satisfactory to Lender in an amount equal to the amount which, if used to pay down the Loan, would result in Stabilized Loan-to-Value Ratio of 75%, and a Debt Service Coverage Ratio of 1.70 to 1.0, calculated based upon Lender’s determination on a pro-forma basis of Lender’s Stabilized Net Cash Flow for the 12 months immediately following and

assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 7.50%, and a Debt Service Coverage Ratio of 1.20 to 1.0, calculated based upon Lender's determination on a pro-forma basis of Lender's underwritten Net Operating Income for the 12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 10.65%.

2.12.3 Rate Lock Agreement. Upon satisfaction of all of the conditions to the Final Advance set forth in **Section 2.12.1**, and subject to the provisions of **Section 2.12.2**, Lender shall return to Borrower, the remaining deposits, if any, held by Lender under the Rate Lock Agreement and not applied by Lender in accordance with the provisions of the Rate Lock Agreement and any Interest Reserve Funds held by Lender pursuant to the Building Loan Agreement.

Section 2.13 **No Reliance**. All conditions and requirements of this Agreement are for the sole benefit of Lender and no other person or party (including, without limitation, the Construction Consultant, the General Contractor and subcontractors (including, without limitation, Major Contractors and Major Subcontractors) and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower. Lender shall have the right, in its sole and absolute discretion, to waive any such condition or requirement.

Section 2.14 **Method of Disbursement of Loan Proceeds**.

2.14.1 Draw Request to Be Submitted to Lender. At such time as Borrower shall desire to obtain an Advance, Borrower shall complete, execute and deliver to Lender a Borrower's Requisition in the form attached as **Exhibit L** to the Building Loan Agreement.

(a) Borrower's Requisition shall be accompanied by a completed and itemized Application and Certificate for Payment (AIA Document No. G702) attached as **Exhibit M** to the Building Loan Agreement or similar form approved by Lender, containing the certification of the General Contractor or contractor or subcontractor to whom such payment is made, as applicable, and Borrower's Architect as to the accuracy of same, together with invoices relating to all items of Hard Costs covered thereby and accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the Improvements to the date of the requisition. The cost breakdown shall also show the percentage of completion of each line item on the Project Loan Budget, and the accuracy of the cost breakdown shall be certified by Borrower and by Borrower's Architect. All such applications for payment shall also show all contractors and subcontractors, including Major Contractors and Major Subcontractors, by name and trade, the total amount of each contract or subcontract, the amount theretofore paid to each subcontractor as of the date of such application, and the amount to be paid from the proceeds of the Advance to each contractor and subcontractor;

(b) the completed construction will be reviewed by the Construction Consultant who will certify to Lender as to the value of completed construction, percentage of completion and compliance with Plans and Specifications;

(c) lien waivers from each other Major Contractor and Major Subcontractors for work done and materials supplied by them which were paid for pursuant to any prior Draw Request;

(d) a written request of Borrower for any necessary changes in the Plans and Specifications, the Project Loan Budget, the Disbursement Schedule or the Construction Schedule;

(e) copies of all executed change orders, contracts and subcontracts, and, to the extent requested by Lender, of all inspection or test reports and other documents relating to the construction of the Project Improvements not previously delivered to Lender; and

(f) such other information, documentation and certification as Lender shall reasonably request.

2.14.2 *Procedure of Advances.*

(a) Each Draw Request shall be submitted to Lender and Construction Consultant at least ten (10) Business Days prior to the Requested Advance Date, and no more frequently than monthly. Lender shall make the requested Advance on the Requested Advance Date so long as all conditions to such Advance are satisfied or waived.

(b) Not later than 11:00 A.M. New York City time, on the Requested Advance Date, Lender shall make such Advance available to Borrower in accordance with the terms of this **Section 2.14.**

(c) Each Advance (other than the Final Advance) shall be in an amount of not less than \$250,000.00.

(d) Each Advance shall be made on a Payment Date.

2.14.3 *Funds Advanced.* Each Advance shall be made by Lender by wire transfer to such checking account of Borrower as specified to Lender in writing or as provided in **Section 2.14.4** below. All proceeds of all Advances shall be used by Borrower only for the purposes for which such Advances were made. Borrower shall not commingle such funds with other funds of Borrower.

2.14.4 *Direct Advances to Third Parties.* Lender may make, at Lender's option, any or all Advances directly or through the Title Company to (i) any Contractor, as applicable, for construction expenses which shall theretofore have been approved by Lender and for which Borrower shall have failed to make payment after receipt by Borrower of such applicable Advance, (ii) Borrower's Architect to pay its fees to the extent funds are allocated thereto in the Building Loan Budget if Borrower shall have failed to do so, (iii) the Construction Consultant to pay its fees, (iv) Lender's counsel to pay its fees, (v) to pay (x) any installment of interest due under the Note, (y) any expenses incurred by Lender which are reimbursable by Borrower under the Loan Documents (including, without limiting the generality of the foregoing, reasonable attorneys' fees and expenses and other fees and expenses incurred by Lender), provided that Borrower shall theretofore have received notice from Lender that such expenses have been

incurred and Borrower shall have failed to reimburse Lender for said expenses beyond any grace periods provided for said reimbursement under the Note, this Agreement or any of the other Loan Documents, or (z) following the occurrence and continuation of an Event of Default, any other sums due to Lender under the Note, this Agreement or any of the other Loan Documents, all to the extent that the same are not paid by the respective due dates thereof, and (vi) any other Person to whom Lender in good faith determines payment is due and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan directly to any such Person or through the Title Company to such Persons in accordance with this **Section 2.14.4** as amounts become due and payable to them hereunder and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. No further authorization from Borrower shall be necessary to warrant such direct Advances to such relevant Person, and all such Advances shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the Mortgage and the other Loan Documents as fully as if made directly to Borrower.

2.14.5 *One Advance Per Month*. Lender shall have no obligation to make Advances of the Loan more often than once in each calendar month except that Lender, in its sole discretion, shall have the right but not the obligation, to make additional advances per month for interest, fees and expenses due under the Loan Documents.

2.14.6 *Advances Do Not Constitute a Waiver*. No Advance shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

2.14.7 *Trust Fund Provisions*. All proceeds advanced hereunder shall be subject to the trust fund provisions of **Section 13** of the Lien Law. Nothing contained in this Agreement is intended to constitute a promise by Borrower, express or implied, or to create any obligation, express or implied, on the part of Borrower, to make an "improvement," as such term is defined in the Lien Law of the State of New York, and no advance of proceeds of the Loan shall at any time be conditioned, directly or indirectly, upon the making of any such "improvement".

2.14.8 *Advances and Disbursements Under Completion Guaranty*. Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, Borrower hereby irrevocably and unconditionally authorizes Lender to make any disbursements of proceeds of the Loan or of any Reserve Funds held by Lender to Guarantor in accordance with the Guaranty of Completion.

Section 2.15 **Interest Advances**. Notwithstanding the requirements contained in Section 2.10, Section 2.11 and Section 2.12, and provided that no Event of Default shall have occurred, Lender shall make an Advance on each Payment Date during the Construction Term from the Interest Reserve Line Item, if and to the extent funds remain available under such line item, to pay interest then due under the Note. Notwithstanding the foregoing, if and to the extent that funds are available in the Additional Interest Reserve Deposit, Lender shall first apply funds

available in the Additional Interest Reserve Deposit to the payment of interest due, prior to making an Advance for such purpose. Nothing contained in this Section 2.15 shall limit or derogate from Borrower's absolute and unconditional obligation to pay interest due under the Note.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Closing**. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the conditions precedent set forth in Section 3.1 of the Building Loan Agreement no later than the Closing Date.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.1 **Borrower Representations**. The representations and warranties of Borrower set forth in Section 4.1 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

Section 4.2 **Survival of Representations**. Borrower agrees that all of the representations and warranties of Borrower set forth in Section 4.1 hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V.

BORROWER COVENANTS

Section 5.1 **Affirmative Covenants**. The affirmative covenants of Borrower set forth in Section 5.1 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

Section 5.2 **Negative Covenants**. The negative covenants of Borrower set forth in Section 5.2 of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein and remade by Borrower.

ARTICLE VI.

INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1 **Insurance**. Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, insurance policies necessary to satisfy the requirements of Section 6.1 of the Building Loan Agreement.

Section 6.2 **Casualty and Condemnation**. Section 6.2 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

Section 6.3 **Application of Net Proceeds**. Section 6.3 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

ARTICLE VII.

RESERVE FUNDS

Section 7.1 **Reserve Funds**. Borrower shall establish such accounts and make such deposits as are required by Article VII of the Building Loan Agreement. The provisions of Article VII of the Building Loan Agreement are incorporated herein by reference as if fully set forth herein.

Section 7.2 **Other Loan Documents**. Borrower's obligations under this Article VII shall be suspended for so long as sufficient amounts are on deposit and reserved as required by the Building Loan Agreement.

Section 7.3 **Reserve Funds, Generally**. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. All interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

ARTICLE VIII.

DEFAULTS

Section 8.1 **Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);

(ii) if any of the Taxes (other than Taxes being contested pursuant to **Section 5.1.2** of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;

(iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;

(iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender’s prior written consent in violation of the provisions of this Agreement or the Mortgage;

(v) if any material representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mezzanine Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mezzanine Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any covenant contained in **Section 4.1.30**;

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;

(xii) if Borrower fails to pay the Administration Fee, or any portion or installment thereof, within five (5) days of the date when due;

(xiii) If Borrower fails to deposit with Lender the cash deposit or Letter of Credit required in accordance with **Section 2.12.2** hereof;

(xiv) if Borrower fails to materially comply with the Construction Schedule;

(xv) if the Completion of the Improvements has not occurred on or prior to the Required Completion Date, subject to Force Majeure or if Lender or the Construction Consultant determines that Completion of the Improvements cannot occur on or prior to the Required Completion Date;

(xvi) if any voucher or invoice is fraudulently submitted by Borrower or in connection with any Advance for services performed or for materials used in or furnished for the Property;

(xvii) if there is any cessation at any time in construction of the Project Improvements for more than twenty (20) consecutive Business Days, other than as a result of Force Majeure;

(xviii) if Borrower expressly confesses in writing to Lender its inability to continue or complete construction of the Project Improvements in accordance with this Agreement;

(xix) if Lender, the Construction Consultant or their representatives are not permitted at all reasonable times upon not less than three (3) Business Days notice to enter upon the Property, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans and Specifications, or if Borrower shall

fail to furnish to Lender or its authorized representative, when requested upon not less than five (5) Business Days notice, copies of the Plans and Specifications;

(xx) if a material adverse change in Borrower's financial condition shall occur which would, in Lender's reasonable determination, materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any other document evidencing or securing the Loan beyond any applicable notice and grace periods expressly set forth in the Loan Documents;

(xxi) if the conditions precedent to the Final Advance have not been satisfied on or prior to the Required Completion Date;

(xxii) If the Guarantor fails to maintain the Required Liquidity and the Required Net Worth covenants specified in the Guaranty of Completion or if the Guarantor shall default under the Guaranty of Completion or the Guaranty of Recourse Carveouts;

(xxiii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xxiv) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of **Section 9.1** hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of **Section 9.1** hereof, in either case for three (3) Business Days after notice to Borrower from Lender;

(xxv) if an Event of Default (as defined in the Building Loan Agreement) shall have occurred;

(xxvi) if there shall be default by Borrower or Guarantor under any of the other Loan Documents, beyond applicable cure periods, if any, contained in such documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such other default, event or condition is to accelerate the maturity of all or any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xxvii) if Guarantor shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of **Section 5.2.15** of the Building Loan Agreement;

(xxviii) if all of the Initial Advance Conditions, including, without limitation, the Unsatisfied Initial Advance Conditions, are not satisfied by the Required Initial Advance Date; or

(xxix) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i)

to (xxviii) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 **Remedies.**

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 **Remedies Cumulative; Waivers.** The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE IX.
SPECIAL PROVISIONS

Article 9 of the Building Loan Agreement is incorporated herein by reference as if fully set forth herein.

ARTICLE X.
MISCELLANEOUS

Section 10.1 **Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 **Lender's Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 **Governing Law.**

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED

ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

National Registered Agents, Inc.
875 Avenue of the Americas, Suite 501
New York, New York 10001

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

with a copy to: Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.
Facsimile No.: (212) 808-7897

If to Borrower: Acadia Atlantic Avenue LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605

Attention: Robert Masters, Esq., General Counsel
Facsimile No.: (914) 288-2162

If to MERS: MERS Commercial
P.O. Box 2300
Flint, Michigan 48501-2300

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 **Trial by Jury.**

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 **Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 **Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.12 **Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 **Expenses; Indemnity.** (1) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan; and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or of any insolvency

or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(a) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(b) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 **Schedules and Exhibits Incorporated.** The Schedules and Exhibits annexed to the Building Loan Agreement are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 **Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 **No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or

therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 **Publicity.** All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 **Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 **Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 **Identical Obligations; Conflict; Construction of Documents; Reliance.** To the extent that Borrower has identical obligations under this Agreement and under any of the other Loan Agreements, performance by Borrower of such obligations under this Agreement or any of the other Loan Agreements shall be deemed performance by Borrower, as applicable, under all such Loan Agreements and hereunder of such obligations. In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of

Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this **Section 10.21** shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 **Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated June 28, 2007 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 **Joint and Several Liability.** If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

Section 10.24 **Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, **Section 5.1.11** hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property and/or construction of the Project Improvements).

The rights described above in this **Section 10.24** may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 **MERS**. Mortgage Electronic Registration Systems, Inc., a Delaware corporation (“**MERS**”), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Mortgage and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to “Mortgagee” shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

[SIGNATURE PAGE TO PROJECT LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER

ACADIA ATLANTIC AVENUE LLC,
a Delaware limited liability company

By: _____
Name: Robert Masters
Title: Senior Vice President

LENDER

BEAR STEARNS COMMERCIAL MORTGAGE, INC., a
New York corporation

By: _____
Name:
Title: Authorized Signatory

BUILDING LOAN AGREEMENT

Dated as of December 26, 2007

Between

ACADIA ATLANTIC AVENUE LLC,
as Borrower

and

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
as Lender

MERS MIN: 8000101-000007166-1

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Exhibit L	Form of Borrower's Requisition
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BUILDING LOAN AGREEMENT

THIS BUILDING LOAN AGREEMENT, dated as of December 26, 2007 (as amended, restated, replaced, supplemented or otherwise modified from time to time, this “**Agreement**” or sometimes, this “**Building Loan Agreement**”), is made by and between **BEAR STEARNS COMMERCIAL MORTGAGE, INC.**, a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 (“**Lender**”) and **ACADIA ATLANTIC AVENUE LLC**, a Delaware limited liability company, having its principal place of business at c/o Acadia Realty Trust, 1311 Mamaroneck Avenue — Suite 260, White Plains, New York 10605, as Borrower (“**Borrower**”).

WITNESSETH:

WHEREAS, Borrower desires to obtain the Building Loan (as hereinafter defined) from Lender; and

WHEREAS, Lender is willing to make the Building Loan to Borrower, subject to and in accordance with the terms of this Agreement and the other Loan Documents (as hereinafter defined).

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereto hereby covenant, agree, represent and warrant as follows:

ARTICLE I.

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1 Definitions.

For all purposes of this Agreement, except as otherwise expressly required or unless the context clearly indicates a contrary intent:

“**ADA**” shall mean the Americans with Disabilities Act of 1992, as amended from time to time.

“**Additional Insolvency Opinion**” shall have the meaning set forth in Section 4.1.30(c).

“**Additional Interest Reserve Deposit**” shall have the meaning set forth in Section 5.1.28 hereof.

“**Additional Mezzanine Borrower**” shall have the meaning set forth in Section 5.2.13(g) hereof.

“**Additional Mezzanine Loan**” shall have the meaning set forth in **Section 5.2.13** hereof.

“**Additional Mezzanine Loan Documents**” shall have the meaning set forth in **Section 5.2.13(f)** hereof.

“**Administration Fee**” shall have the meaning set forth in the Administration Fee Agreement.

“**Administration Fee Agreement**” shall mean that certain Administration Fee Agreement dated as of the date hereof between Borrower and Lender.

“**Advance**” or “**Advances**” shall mean any disbursement of the proceeds of the Building Loan by Lender pursuant to the terms of this Agreement.

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“**Affiliated Manager**” shall mean any Manager in which Borrower or Guarantor has, directly or indirectly, any legal, beneficial or economic interest.

“**Affiliate Fees**” shall mean collectively, any development fee, management fee, brokerage fee, commission, distribution, reimbursement, salary, consideration sum or amount, however characterized, payable to any Restricted Party with respect to the Property and/or the Project.

“**Affirmation of Payment**” shall have the meaning as set forth in **Section 2.11.5(e)**.

“**Aggregate Debt Service Coverage Ratio**” shall have the meaning set forth in **Section 5.2.13** hereof.

“**Agreement**” shall mean this Building Loan Agreement, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**ALTA**” shall mean American Land Title Association, or any successor thereto.

“**Annual Budget**” shall mean the operating budget, including all planned Capital Expenditures, for the Property prepared by Borrower in accordance with **Section 5.1.11(e)** hereof for the applicable Fiscal Year or other period.

“**Anticipated Costs Report**” shall have the meaning as set forth in **Section 2.11.5(a)**.

“**Approved Annual Budget**” shall have the meaning set forth in **Section 5.1.11(e)** hereof.

“Approved Bank” shall mean a bank or other financial institution which has a minimum long term unsecured debt rating of at least **“AA”** by S&P and Fitch and **“Aa2”** by Moody’s.

“Architect’s Certificate” shall have the meaning as set forth in **Section 2.10.10**.

“Architect’s Contract” shall mean that certain Professional Services Authorization between Borrower and Borrower’s Architect dated as of March 16 2007, as the same may be amended from time to time in compliance with the terms hereof.

“Assignment of Contracts” shall mean that certain Assignment of Agreement Permits and Contracts dated as of the date hereof from Borrower, as assignor, to Lender, as assignee.

“Assignment of Leases” shall mean, collectively, the Building Loan Assignment of Leases and the Project Loan Assignment of Leases.

“Assignment of Management Agreement” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees, dated as of the date hereof, among Lender, Borrower and Manager, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Award” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation in respect of all or any part of the Property.

“Bankruptcy Action” shall mean with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which such Person colludes with, or otherwise assists such Person, or causes to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due.

“Bankruptcy Code” shall mean Title 11 of the United States Code, 11 U.S.C. §101, *et seq.*, as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal or state bankruptcy or insolvency law.

“Borrower” shall have the meaning set forth in the introductory paragraph hereto, together with its successors and permitted assigns.

“Borrower’s Architect” shall mean Butz Wilbern, Ltd..

“**Borrower’s Requisition**” shall have the meaning set forth in **Section 2.14.1** hereof.

“**BSCMI**” shall mean Bear Stearns Commercial Mortgage, Inc., a New York corporation, and its successors in interest.

“**Budget Line**” shall have the meaning set forth in **Section 2.1.14** hereof.

“**Building Loan**” shall mean the loan made by Lender to Borrower pursuant to this Agreement in the principal amount of up to the Building Loan Amount.

“**Building Loan Amount**” shall mean Eleven Million, Two Hundred Twenty-Nine Thousand, Two Hundred Sixty and 33/100 Dollars (\$11,229,260.33).

“**Building Loan Assignment of Leases**” shall mean that certain Building Loan Assignment of Leases and Rents, dated as of the date hereof, from Borrower, as assignor, to Lender, as assignee.

“**Building Loan Budget**” shall have the meaning set forth in **Section 2.1.14** hereof.

“**Building Loan Costs**” shall mean all Project-Related Costs (including Hard Costs and Soft Costs) that are Costs of the Improvements.

“**Building Loan Documents**” shall mean, collectively, this Agreement, the Building Loan Note, the Building Loan Mortgage, the Building Loan Assignment of Leases, as well as all other documents now or hereafter executed and/or delivered with respect to the Building Loan.

“**Building Loan Earn Out Advance**” shall have the meaning set forth in **Section 2.12.2** hereof.

“**Building Loan Mortgage**” shall mean that certain Building Loan Mortgage, Assignment of Leases and Rents and Security Agreement dated the date hereof, executed and delivered by Borrower to Lender as security for the Building Loan and encumbering the Property.

“**Building Loan Note**” shall mean that certain Building Loan Promissory Note, dated the date hereof, in the principal amount of up to the Building Loan Amount made by Borrower in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Business Day**” shall mean any day other than a Saturday, Sunday or any other day on which national banks in New York, New York, or the place of business of any Servicer are not open for business.

“**Capital Expenditures**” shall mean, for any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs).

“**Carrying Costs**” shall mean, the sum of the following costs associated with the Property for any specified period: (a) Taxes, (b) Other Charges, (c) Insurance Premiums and (d) Operating Expenses.

“**Cash**” shall mean the legal tender of the United States of America.

“**Cash and Cash Equivalents**” shall mean any one or a combination of the following: (i) Cash, and (ii) U.S. Obligations, and (iii) an irrevocable standby Letter of Credit.

“**Cash Management Account**” shall have the meaning set forth in **Section 2.7.2(a)** hereof.

“**Cash Management Agreement**” shall mean that certain Cash Management Agreement, dated as of the date hereof, by and among Borrower, Manager, Cash Management Bank and Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Cash Management Bank**” shall mean Wells Fargo Bank, N.A., a national banking association, or any successor Eligible Institution acting as Agent under the Cash Management Agreement.

“**Cash Management Conditions**” shall have the meaning set forth in **Section 2.7** hereof.

“**Cash Trap Event**” shall mean the occurrence of any of the following: (a) an Event of Default; (b) any Bankruptcy Action of Borrower or Mezzanine Borrower; (c) any Bankruptcy Action of Manager; or (d) on or after the last day of the Construction Term, a DSCR Trigger.

“**Cash Trap Event Cure**” shall mean:

(a) if the Cash Trap Event is caused solely by the occurrence of:

(i) clause (a) in the definition of “Cash Trap Event”, a cure of the Event of Default which gave rise to the Cash Trap Event which is accepted or waived in writing by Lender, in its sole discretion, prior to Lender exercising any of its rights, to accelerate the Loan, move to appoint a receiver, or commence a foreclosure action;

(ii) clause (c) in the definition of “Cash Trap Event”, either (A) if such Cash Trap Event is as a result of the filing of an involuntary petition against Manager and not consented to by Manager, upon the same being discharged, stayed or dismissed within thirty (30) days of such filing and such filing (after dismissal or discharge), provided, that such dismissal or discharge in Lender’s reasonable opinion does not adversely impact the Loan or the Property, or

(B) if Borrower replaces the Manager with a Qualified Manager pursuant to a Replacement Management Agreement approved by Lender;

(iii) a DSCR Trigger Event, if the Debt Service Coverage Ratio is greater than 1.05 to 1:00 based upon the trailing six (6) month period annualized as of two (2) consecutive Debt Service Coverage Ratio Determination Dates occurring thereafter.

(b) provided, that, each such Cash Trap Event Cure set forth in this definition shall be subject to the following conditions, (i) no Event of Default (other than that giving rise to the Cash Trap Event) shall have occurred and be continuing under this Agreement or any of the other Loan Documents, (ii) Borrower shall have notified Lender in writing of its election to cure the respective Cash Trap Event, (iii) a Cash Trap Event Cure under clauses (a)(i) and (a)(ii) may occur no more than 3 times during the term of the Loan, (iv) Borrower shall have paid all of Lender's reasonable expenses incurred in connection with such cure including, reasonable attorney's fees and costs; and (v) in no event shall Borrower have the right to "cure" a Cash Trap Event occurring by reason of a Bankruptcy Action of Borrower or Mezzanine Borrower.

"Cash Trap Period" shall mean each period commencing on the occurrence of a Cash Trap Event and continuing until the earlier of (a) the Payment Date next occurring following the related Cash Trap Event Cure, or (b) until payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents in accordance with the terms and provisions of the Loan Documents.

"Casualty" shall have the meaning set forth in Section 6.2 hereof.

"Casualty Consultant" shall have the meaning set forth in Section 6.2.4(d) hereof.

"Casualty Retainage" shall have the meaning set forth in Section 6.2.4(e) hereof.

"Clearing Account" shall have the meaning set forth in Section 2.7 hereof.

"Clearing Account Agreement" shall have the meaning set forth in Section 2.7.1 hereof.

"Clearing Bank" shall have the meaning set forth in Section 2.7 hereof.

"Closing Date" shall mean the date of this Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended, as it may be further amended from time to time, and any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Completion of the Improvements" shall mean the substantial completion (i.e., completion of the Project Improvements other than Punch List Items) of the construction and renovation of the Project Improvements substantially in accordance with all Plans and Specifications, all Legal Requirements, all Permitted Encumbrances and this Agreement, and that all utilities necessary to service the Project Improvements have been connected and are in

operation, such completion to be evidenced to the reasonable satisfaction of Lender and the Construction Consultant; together with the delivery to Lender of:

(i) a permanent or temporary certificate(s) of occupancy for the Project Improvements and evidence that all other Governmental Approvals have been issued and all other Legal Requirements have been satisfied so as to allow the Project Improvements to be used and operated in accordance with the Loan Documents and the Plans and Specifications; and

(ii) AIA Form G704 (Certificate of Substantial Completion) completed and executed by Borrower's Architect certifying the substantial completion of the Project Improvements in accordance with the Plans and Specifications.

"Condemnation" shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

"Condemnation Proceeds" shall have the meaning set forth in **Section 6.2.1** hereof.

"Construction Advance Conditions" shall have the meaning set forth in **Section 2.11** hereof.

"Construction Consultant" shall mean EMG Consulting Group, or such other Person as Lender may designate and engage as a replacement to inspect the Project Improvements and the Property as construction progresses and consult with and to provide advice to and to render reports to Lender, which Person may be, at Lender's option upon notice to Borrower, either an officer or employee of Lender or consulting architects, engineers or inspectors appointed by Lender.

"Construction Schedule" shall mean the construction schedule attached hereto as **Schedule IV**, broken down by trade, of Borrower's best good faith estimate of the dates of commencement and completion of the Project Improvements certified by Borrower to Lender in final form approved by Lender and the Construction Consultant prior to the Closing.

"Construction Term" shall mean the period commencing on the date hereof and ending on the first to occur of (i) the Maturity Date, whether by acceleration or otherwise, (ii) the 24th Payment Date, and (iii) the Final Advance.

"Contingency" shall mean the contingency Line Item in the Building Loan Budget and/or Project Loan Budget.

"Contract" shall mean shall mean any agreement (including the General Contractor's Agreement) entered into by Borrower or by General Contractor, in which the Contractor or Subcontractor thereunder agrees to provide services, labor and/or materials in connection with the Project Improvements. All Contracts shall require that the Contractor or Subcontractor thereunder use union labor.

“**Contractor**” shall mean any contractor hired by Borrower, including, without limitation, the General Contractor (including subsidiaries and affiliates), supplying services, labor and/or materials in connection with the Project.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “Controlled” and “Controlling” shall have correlative meanings.

“**Costs of the Improvement**” shall mean those items defined as an “improvement” and/or a “cost of improvement” under Section 2 of Article 1 the Lien Law.

“**Covered Disclosure Information**” shall have the meaning set forth in **Section 9.2(b)** hereof.

“**Debt**” shall mean the outstanding principal amount of the Building Loan set forth in, and evidenced by, this Agreement, the Building Loan Documents and the Building Loan Note, together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Building Loan under the Building Loan Note, this Agreement, the Building Loan Mortgage or any other Building Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, the aggregate scheduled principal and interest payments due under this Building Loan Agreement and the Building Loan Note.

“**Debt Service Coverage Ratio**” shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, adjusted for a vacancy rate equal to the greater of the actual vacancy rate, the market vacancy rate and an assumed vacancy rate equal to five percent (5%), without deduction for (i) actual management fees incurred in connection with the operation of the Property less (A) management fees equal to the greater of (1) assumed management fees of six percent (6%) of Gross Income from Operations or (2) the actual management fees incurred, and (B) Replacement Reserve Fund contributions equal to \$16,500.00 per annum; and
- (b) the denominator is the Total Debt Service for such period assuming a thirty (30) year amortization schedule.

“**Debt Service Coverage Ratio Determination Date**” shall mean the earlier of the Required Completion Date and the date of the Final Advance and the first day of each calendar month thereafter.

“**Default**” shall mean the occurrence of any event hereunder or under any other Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean, with respect to the Loan, a rate per annum equal to the lesser of (a) the maximum rate permitted by applicable law or (b) five percent (5%) above the Interest Rate.

“**Defeasance Date**” shall have the meaning set forth in Section 2.5.1(a)(i) hereof.

“**Defeasance Deposit**” shall mean an amount equal to the remaining principal amount of the Note, the Defeasance Payment Amount, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of Section 2.5 hereof (including, without limitation, any fees and expenses of accountants, attorneys and the Rating Agencies incurred in connection therewith).

“**Defeasance Event**” shall have the meaning set forth in Section 2.5.1(a) hereof.

“**Defeasance Expiration Date**” shall mean the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the REMIC Trust.

“**Defeasance Payment Amount**” shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments.

“**Deferred Maintenance Condition**” shall have the meaning set forth in Section 7.4.1.

“**Development Budget**” shall have the meaning set forth in Section 2.1.14 hereof.

“**Disbursement Schedule**” shall mean the schedule of the amounts of Advances hereunder and Project Loan Advances under the Project Loan anticipated to be requisitioned by Borrower each month during the term of the Loan, attached hereto as part of the Development Budget and in final form approved by Lender and the Construction Consultant prior to the Closing Date.

“**Disclosure Document**” shall mean a prospectus, prospectus supplement, private placement memorandum, or similar offering memorandum or offering circular, or such other information reasonably requested by Lender, in each case in preliminary or final form, used to offer Securities in connection with a Securitization.

“**Dollars**” or “**\$**” shall mean lawful money of the United States of America.

“**Draw Request**” shall mean, with respect to each Advance, Borrower’s Requisition for such Advance, along with such other documents required by this Agreement to be furnished to Lender as a condition to such Advance.

“DSCR Trigger Event” shall mean, that as of any Debt Service Coverage Ratio Determination Date, the Debt Service Coverage Ratio as determined by Lender based on the trailing six (6) month period (annualized) immediately preceding the date of such determination is less than 1.00 to 1.0.

“Earn Out Advance” shall have the meaning set forth in **Section 2.12.2** hereof.

“Eligible Account” shall mean a separate and identifiable account from all other funds held by the holding institution that is either (a) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity which, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having in either case a combined capital and surplus of at least Fifty Million and 00/100 Dollars (\$50,000,000.00) and subject to supervision or examination by federal and state authority. An Eligible Account will not be evidenced by a certificate of deposit, passbook or other instrument.

“Eligible Institution” shall mean a depository institution or trust company, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1+” by S&P, “P-1” by Moody’s and “F-1+” by Fitch in the case of accounts in which funds are held for thirty (30) days or less (or, in the case of accounts in which funds are held for more than thirty (30) days, the long-term unsecured debt obligations of which are rated at least “AA” by Fitch and S&P and “Aa2” by Moody’s).

“Embargoed Person” shall have the meaning set forth in **Section 5.1.42** hereof.

“Environmental Engineer” shall mean such environmental engineering or similar inspection firms approved by Lender.

“Environmental Indemnity” shall mean that certain Environmental Indemnification Agreement, dated as of the date hereof, executed by Borrower and Acadia Strategic Opportunity Fund II, LLC in connection with the Loan for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Equipment” shall have the meaning as set forth in the granting clause of the Building Loan Mortgage.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

“Event of Default” shall have the meaning set forth in **Section 8.1(a)** hereof.

“Excess Cash Flow” shall have the meaning set forth in Section 3.4(i) of the Cash Management Agreement.

“**Excess Cash Flow Funds**” shall have the meaning set forth in Section 7.6 hereof.

“**Excess Cash Flow Reserve**” shall have the meaning set forth in Section 7.6 hereof.

“**Exchange Act**” shall have the meaning set forth in Section 9.2(a) hereof.

“**Extraordinary Expense**” shall have the meaning set forth in Section 5.1.11(f) hereof.

“**Final Advance**” shall have the meaning set forth in Section 2.12.1.

“**Final Project Loan Advance**” shall mean the Final Advance as defined in the Project Loan Agreement.

“**Final Project Report**” shall mean the report to be prepared by the Construction Consultant of its review of the Development Budget, Building Loan Budget, Project Loan Budget, the Plans and Specifications, the Construction Schedule in final form, the Disbursement Schedule, all in final form, the General Contractor’s Agreement, the Contracts, the Major Contracts and such other documents and information reasonably required by the Construction Consultant.

“**FIRREA**” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“**Fiscal Year**” shall mean each twelve (12) month period commencing on January 1 and ending on December 31 during each year of the term of the Loan.

“**Fitch**” shall mean Fitch, Inc.

“**Fixtures**” shall have the meaning set forth in the Mortgage.

“**Force Majeure**” shall mean, with respect to the obligations of any Person, actual delay beyond the reasonable control of such Person, which is due to any of the following (a) natural disaster, fire or other casualty, earthquake, flood, explosion, abnormally inclement weather for the season in question (as reported by an appropriate authority) or any other act of God, (b) declared or undeclared war, acts of domestic or international terrorism, riot, mob violence, insurrection or sabotage, (c) the inability to procure labor, equipment, facilities, energy, materials or supplies, the failure of transportation, any other labor disturbance, strikes, lockouts or actions of labor unions, in each such case, so long as such cause is not within the reasonable control of such Person, (d) condemnation, temporary restraining orders or injunctions, changes after the date hereof in the requirements or interpretations of relevant laws, in each such case, so long as such cause is not within the reasonable control of such Person, or (e) any other cause not within the reasonable control of such Person; provided that, with respect to any of the circumstances described in the foregoing clauses (a) through (e) inclusive: (i) for the purposes of this Agreement, any period of Force Majeure shall apply only to such person’s performance of

the obligations necessarily affected by such circumstance and shall continue only so long as such person is continuously and diligently using all reasonable efforts to minimize the effect and duration thereof; and (ii) notwithstanding the foregoing, Force Majeure shall not include (A) the unavailability or insufficiency of funds as a result of the insolvency of such Person or any of its Affiliates, (B) any breach of contract or default by Borrower's Architect, the General Contractor or any Major Contractor under their respective contracts and agreements concerning the Project Improvements.

"GAAP" shall mean generally accepted accounting principles in the United States of America as of the date of the applicable financial report.

"General Contractor" shall mean Designline Construction Services, Inc. or any other general contractor or construction manager, as applicable, approved by Lender and the Construction Consultant in accordance with the terms of this Agreement.

"General Contractor's Agreement" shall have the meaning set forth in [Section 2.10.9](#).

"General Contractor's Certificate" shall have the meaning set forth in [Section 2.10.10](#).

"Governmental Approvals" shall mean all approvals, consents, waivers, orders, acknowledgments, authorizations, permits and licenses required under applicable Legal Requirements to be obtained from any Governmental Authority for the performance of the demolition work and construction of the Project Improvements and/or the use, occupancy and operation of the Project Improvements before the commencement, during and following completion of construction and Building Loan, as the context requires, including, without limitation, all land use, building, subdivision, zoning and similar ordinances and regulations promulgated by any Governmental Authority.

"Governmental Authority" shall mean any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Gross Income from Operations" shall mean, for any period, all sustainable income, computed in accordance with GAAP, derived from the ownership and operation of the Property from whatever source during such period, *including*, but not limited to, Rents from tenants in occupancy, open for business and paying full contractual rent without right of offset or credit, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, rent concessions or credits, business interruption or other loss of income or rental insurance proceeds or other required pass-throughs and interest on Reserves, if any, but *excluding* Rents from tenants that are included in any Bankruptcy Action, sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, Insurance Proceeds (other than business interruption or other loss of income or rental insurance), Awards, unforfeited security deposits, utility and other similar deposits and any disbursements to Borrower from the Reserve Funds, if any.

“**Guarantor**” shall mean, collectively, Acadia Strategic Opportunity Fund II, LLC, a Delaware limited liability company, and Post Management, L.L.C., a Delaware limited liability company.

“**Guaranty of Completion**” shall mean that certain Guaranty of Completion, dated as of the date hereof, executed and delivered by Acadia Strategic Opportunity Fund II, LLC in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Guaranty of Recourse Carveouts**” shall mean that certain Guaranty of Recourse Carveouts, dated as of the date hereof, executed and delivered by Guarantor in connection with the Loan to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Hard Costs**” shall mean those Building Loan Costs which are for labor, materials, equipment and fixtures.

“**Improvements**” shall have the meaning set forth in the granting clause of the Mortgage

“**Indebtedness**” of a Person, at a particular date, means the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

“**Indemnified Liabilities**” shall have the meaning set forth in **Section 10.13(a)** hereof.

“**Indemnified Persons**” shall have the meaning set forth in **Section 9.2(b)** hereof.

“**Indemnifying Person**” shall mean Borrower and Guarantor.

“**Independent Director**” shall mean a director of a corporation or a limited liability company that is a Special Purpose Entity and “**Independent Manager**” shall mean a manager of a limited liability company that is a Special Purpose Entity, in either case, who is not at the time of initial appointment, or at any time while serving as an Independent Director or Independent Manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director or Independent Manager of a Special Purpose Entity), officer, employee, partner, member, attorney or counsel of Guarantor, Borrower, or any Affiliate of any of them (unless such natural person is an Independent Director or Independent Manager provided by a nationally recognized company

that provides professional independent managers and which also provides other corporate services in the ordinary course of business, in which case such Person may receive reasonable fees for servicing as Independent Director or Independent Manager of a Special Purpose Entity); (b) a creditor, customer, supplier or other Person who derives any of its purchases or revenues from its activities with Guarantor, Borrower or any Affiliate of any of them; (c) a Person controlling or under common control with any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, creditor, customer, supplier or other person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Initial Advance**” shall have the meaning set forth in Section 2.10 hereof.

“**Initial Advance Conditions**” shall have the meaning set forth in Section 2.10 hereof.

“**Initial Interest Reserve Deposit**” shall have the meaning set forth in Section 7.2.1.

“**Initial Tax and Insurance Escrow Deposit**” shall have the meaning set forth in Section 7.1 hereof.

“**Insolvency Opinion**” shall mean that certain non-consolidation opinion letter dated the date hereof delivered by Wachtel & Masyr, LLP in connection with the Loan.

“**Insurance Premiums**” shall have the meaning set forth in Section 6.1.1(e) hereof.

“**Insurance Proceeds**” shall have the meaning set forth in Section 6.2.1.

“**Intellectual Property**” shall have the meaning set forth in Section 4.1.43 hereof.

“**Interest Period**” shall mean: (a) the period commencing on the Closing Date and ending on the last day of the month in which the Closing Date occurs, both dates inclusive; and (b) the period commencing on and including the first day of each calendar month thereafter during the term of Loan and ending and including the last day of such calendar month.

“**Interest Rate**” shall mean seven and one hundred forty-four one-thousandths percent (7.144%), provided, however, in the event that on or before January 1, 2011, the Property shall have achieved a Debt Service Coverage Ratio as determined by Lender of 1.15 to 1.0 using a debt service constant of 7.50%, and Borrower delivers to Lender a MAI appraisal performed, at Borrower’s sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days of such date made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender’s internal appraisal staff, whose decision shall be final absent manifest error showing that loan-to-value ratio for the Property is no greater than 75% assuming a fully advanced Loan, Lender shall, upon Borrower’s written

request, reduce the Interest Rate to a per annum rate equal to five and seven hundred ninety-four one-thousandths percent (5.794%), commencing on the first Payment Date after Borrower's request. Any reduction in the Interest Rate as set forth above shall be effective commencing on the first Payment Date after Borrower's request for such reduction and satisfaction of the conditions set forth above and no reduction in the Interest Rate shall be retroactive. In the event that Borrower fails to satisfy the conditions for a reduction of the Interest Rate within the time periods set forth above, time being of the essence, Borrower shall have no further right to obtain a reduction in the Interest Rate. Notwithstanding anything to the contrary contained herein, Lender shall have the right, in its sole discretion, at any time after the expiration of the Construction Term and prior to a Securitization of the Loan, to increase the Interest Rate by up to two-tenths of one percent (0.20%).

"Interest Reserve Account" shall have the meaning set forth in Section 7.2.1.

"Interest Reserve Deposit" shall have the meaning set forth in Section 7.2.1.

"Interest Reserve Fund" shall have the meaning set forth in Section 7.2.1.

"Interest Reserve Line Item" shall mean the interest reserve Line Item of the Project Loan Budget.

"Land" shall mean the land described on Exhibit "A" attached hereto.

"Lease" shall mean any lease, sublease or subsublease, letting, license, concession or other agreement (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of any space in the Property, and every modification, amendment or other agreement relating to such lease, sublease, subsublease, or other agreement entered into in connection with such lease, sublease, subsublease, or other agreement and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto.

"Legal Requirements" shall mean, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting the Property or any part thereof, or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Borrower, at any time in force affecting the Property or any part thereof, including, without limitation, any which may (a) require repairs, modifications or alterations in or to the Property or any part thereof, or (b) in any way limit the use and enjoyment thereof.

"Lender" shall have the meaning set forth in the introductory paragraph hereto, together with its successors and assigns.

"Letter of Credit" shall mean an irrevocable, unconditional, transferable, clean sight draft letter of credit, as the same may be replaced, split, substituted, modified, amended,

supplemented, assigned or otherwise restated from time to time, (either an evergreen letter of credit or a letter of credit which does not expire until at least two (2) Business Days after the Maturity Date or such earlier date as such Letter of Credit is no longer required pursuant to the terms of this Agreement) in favor of Lender and entitling Lender to draw thereon based solely on a statement purportedly executed by an officer of Lender stating that it has the right to draw thereon, and issued by a domestic Approved Bank or the U.S. agency or branch of a foreign Approved Bank, or if there are no domestic Approved Banks or U.S. agencies or branches of a foreign Approved Bank then issuing letters of credit, then such letter of credit may be issued by a domestic bank, the long term unsecured debt rating of which is the highest such rating then given by the Rating Agency or Rating Agencies, as applicable, to a domestic commercial bank.

“**Liabilities**” shall have the meaning set forth in **Section 9.2(b)** hereof.

“**Lien**” shall mean, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting Borrower, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic’s, materialmen’s and other similar liens and encumbrances.

“**Lien Law**” shall mean the Lien Law of the State of New York.

“**Line Item**” shall have the meaning set forth in **Section 2.1.14** hereof.

“**Liquidity**” means unrestricted and unencumbered Cash and Cash Equivalents acceptable to Lender.

“**Loan**” shall mean collectively, the Building Loan and the Project Loan.

“**Loan Agreement**” shall mean collectively, this Building Loan Agreement, and the Project Loan Agreement.

“**Loan Documents**” shall mean collectively, the Building Loan Documents and the Project Loan Documents, the Environmental Indemnity, the Guaranty of Completion, the Guaranty of Recourse Carveouts, the Cash Management Agreement, the Clearing Account Agreement, the Assignment of Contracts, the Administration Fee Agreement, the Rate Lock Agreement, and all other documents executed and/or delivered in connection with the Loan.

“**Loan-to-Cost Ratio**” shall mean, as of any date, the ratio of (i) the Total Loan Amount to (ii) the aggregate amount of Project-Related Costs (excluding any Affiliate Fees) actually paid as of such date plus Project-Related Costs to be paid with the proceeds of the Advance(s) being requested by Borrower on such date hereunder and under the Project Loan Agreement.

“**Major Contractor**” shall mean any contractor hired by Borrower, including, without limitation, the General Contractor (including subsidiaries and affiliates), supplying services, labor and/or materials in connection with the Project which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or

multiple contracts or agreements, after taking into account all change orders, or which relates to major project elements such as steel, concrete, HVAC systems, windows, doors and other similar items.

“**Major Contracts**” shall mean any Contract with a Major Contractor or Major Subcontractor.

“**Major Subcontractor**” shall mean any subcontractor supplying services, labor and/or materials in connection with the Project which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders, or which relates major project elements such as steel, concrete, HVAC systems, windows, doors and other similar items.

“**Management Agreement**” shall mean the Management Agreement dated as of October 23, 2007 by and between Borrower and Manager pursuant to which Manager is to provide management and other services with respect to the Property, or, if the context requires, the Replacement Management Agreement.

“**Manager**” shall mean Post Management, L.L.C., a Delaware limited liability company, or, if the context requires, a Qualified Manager who is managing the Property in accordance with the terms and provisions of this Agreement pursuant to a Replacement Management Agreement.

“**Material Action**” means, with respect to any Person, to file any insolvency or reorganization case or proceeding, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against such Person, to file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for such Person or a substantial part of its property, to make any assignment for the benefit of creditors of such Person, to admit in writing such Person’s inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

“**Maturity Date**” shall mean January 1, 2020 or such earlier date on which the final payment of principal of the Building Loan Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by declaration of acceleration, or otherwise.

“**Maximum Legal Rate**” shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for herein or the other Loan Documents, under the laws of such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

“**MERS**” shall have the meaning set forth in [Section 10.25](#) hereof.

“**Mezzanine Borrower**” shall have the meaning set forth in Section 9.1.

“**Mezzanine Loan Documents**” shall have the meaning set forth in Section 9.1.

“**Monthly Debt Service Payment Amount**” shall mean (a) an amount equal to interest only on the outstanding principal balance of the Building Loan, calculated in accordance with Section 2.2 hereof, for each Payment Date commencing with the Payment Date occurring in February, 2008 through and including the Payment Date occurring in January, 2015, and (b) a constant monthly payment of \$75,797.67 commencing with the Payment Date occurring in February, 2015 and on each Payment Date thereafter, provided, however, that in the event that the Interest Rate is modified in accordance with the provisions of the definition of “Interest Rate,” the Monthly Debt Service Payment Amount shall be adjusted by Lender based upon the modified Interest Rate and a thirty (30) year amortization schedule, Lender’s determination of the Monthly Debt Service Payment Amount being binding absent manifest error.

“**Moody’s**” shall mean Moody’s Investors Service, Inc.

“**Mortgage**” shall mean, collectively, the Building Loan Mortgage and the Project Loan Mortgage, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“**Net Cash Flow**” shall mean, for any period, the amount obtained by subtracting Operating Expenses and Capital Expenditures for such period from Gross Income from Operations for such period.

“**Net Operating Income**” shall mean the amount obtained by subtracting Operating Expenses from Gross Income from Operations.

“**Net Proceeds**” shall have the meaning set forth in Section 6.2.1 hereof.

“**Net Proceeds Deficiency**” shall have the meaning set forth in Section 6.2.4(g) hereof.

“**Net Worth**” means with respect to any Person for any period, assets less liabilities of such Person, determined in accordance with GAAP.

“**Note**” shall mean, collectively, the Building Loan Note and the Project Loan Note.

“**Officer’s Certificate**” shall mean a certificate delivered to Lender by Borrower that is signed by an authorized officer of the general partner or managing member of Borrower.

“**Open Period Date**” shall have the meaning set forth in Section 2.4.1 hereof.

“**Operating Expenses**” shall mean the total of all expenditures, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including without limitation, utilities, ordinary repairs and maintenance, insurance, license fees,

property taxes and assessments, advertising expenses, management fees, payroll and related taxes, computer processing charges, operational equipment or other lease payments as approved by Lender, and other similar costs, but excluding depreciation, Debt Service, Capital Expenditures and contributions to the Reserve Funds.

“**Operating Reserve Account**” shall have the meaning set forth in Section 7.7.1 hereof.

“**Operating Reserve Deposit**” shall have the meaning set forth in Section 7.7.1 hereof.

“**Operating Reserve Funds**” shall have the meaning set forth in Section 7.7.1 hereof.

“**Other Charges**” shall mean all maintenance charges, impositions other than Taxes, and any other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Property, now or hereafter levied or assessed or imposed against the Property or any part thereof.

“**Other Debt**” shall mean the “**Debt**” as defined in both the Project Loan Agreement, and the Mezzanine Loan Documents, if applicable.

“**Other Design Professionals**” shall mean all architects (other than Borrower’s Architect) and engineers engaged by Borrower and/or Borrower’s agent to work on the Project Improvements.

“**Other Obligations**” shall have the meaning as set forth in the Mortgage.

“**Payment Date**” shall mean February 1, 2008, and the 1st day of every month thereafter during the term of the Loan until and including the Maturity Date or, if such day is not a Business Day, the immediately preceding Business Day.

“**Performance Letter**” shall have the meaning set forth in Section 2.10.11(a) hereof.

“**Permitted Encumbrances**” shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, unless and to the extent being contested by Borrower in compliance with the terms of this Agreement, and (d) such other title and survey exceptions as Lender has approved or may approve in writing in Lender’s sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or Borrower’s ability to complete the Project or repay the Loan.

“**Permitted Investments**” shall have the meaning set forth in the Cash Management Agreement.

“Permitted Mezzanine Lender” shall have the meaning set forth in **Section 5.2.13** hereof.

“Permitted Release Date” shall mean the earlier of (i) the Defeasance Expiration Date or (ii) the date that is the third (3rd) anniversary of the Completion of the Improvements.

“Permitted Transfer” means any of the following:

(a) any transfer, directly as a result of the death of a natural Person, of stock, membership interests, partnership interests or other ownership interests in any Restricted Party previously held by the decedent in question to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer;

(b) any transfer, directly as a result of the legal incapacity of a natural Person, of stock, membership interests, partnership interests or other ownership interests previously held by the such natural Person to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Borrower delivers notice to Lender as soon as practicable thereafter and that such Restricted Party is promptly reconstituted, if applicable, following the death of such member, partner or shareholder and there is no change in Control of such Restricted Party as a result of such transfer,

(c) transfers for estate planning purposes of a natural Person’s stock, membership interests, partnership interests or other ownership interests in a Restricted Party by the current partner(s), shareholder(s) or member(s), as applicable, to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as such Restricted Party is reconstituted, if required, following such transfer and there is no change in Control of such Restricted Party as a result of such transfer;

(d) transfers permitted pursuant to Section 5.2.10(d) of this Agreement;

(e) the sale, transfer, or issuance of stock in Acadia Realty Trust, in the ordinary course of business, provided such stock is listed on the NYSE or other nationally recognized stock exchange; and

(f) a Transfer by Slayton Properties Atlantic, LLC of 100% of its membership interest in Borrower to Acadia 3319 Atlantic Avenue LLC or an Affiliate of Acadia Strategic Opportunity Fund II, LLC Controlled by Acadia Realty Trust.

“Person” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Personal Property” shall have the meaning set forth in the granting clause of the Mortgage.

“Physical Conditions Report” shall mean, a structural engineering report prepared by a company satisfactory to Lender regarding the physical condition of the Property, satisfactory in form and substance to Lender in its sole discretion, which report shall, among other things, confirm that the Property and its use complies, in all material respects, with all applicable Legal Requirements (including, without limitation, zoning, subdivision and building laws).

“Plans and Specifications” shall mean the final plans and specifications for the performance of the Project Improvements prepared by Borrower’s Architect and the Other Design Professionals and approved by Lender, the Construction Consultant, as the same may be amended and supplemented from time to time in accordance with the terms of this Agreement. The Preliminary Plans and Specifications submitted to Lender are listed on **Schedule III** attached hereto

“Policies” shall have the meaning specified in **Section 6.1.1(e)** hereof.

“Policy” shall have the meaning specified in **Section 6.1.1(e)** hereof.

“Prepayment Date” shall have the meaning set forth in **Section 2.4.4** hereof.

“Prepayment Rate” shall mean the bond equivalent yield (in the secondary market) on the United States Treasury Security that as of the Prepayment Rate Determination Date has a remaining term to maturity closest to, but not exceeding, the remaining term to the Maturity Date as most recently published in the “Treasury Bonds, Notes and Bills” section in The Wall Street Journal as of such Prepayment Rate Determination Date. If more than one issue of United States Treasury Securities has the same remaining term to the Maturity Date, the “Prepayment Rate” shall be the yield on such United States Treasury Security most recently issued as of the Prepayment Rate Determination Date. The rate so published shall control absent manifest error. If the publication of the Prepayment Rate in The Wall Street Journal is discontinued, Lender shall determine the Prepayment Rate on the basis of “Statistical Release H.15 (519), Selected Interest Rates,” or any successor publication, published by the Board of Governors of the Federal Reserve System, or on the basis of such other publication or statistical guide as Lender may reasonably select.

“Prepayment Rate Determination Date” shall mean the date which is five (5) Business Days prior to the date that such prepayment shall be applied in accordance with the terms and provisions of **Section 2.4.1** hereof.

“Prescribed Laws” shall mean, collectively, (a) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (The USA PATRIOT Act), (b) Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, (c) the International Emergency Economic Power Act, 50 U.S.C. §1701 et. seq. and (d) all other Legal Requirements relating to money laundering or terrorism.

“Principal” shall mean the Special Purpose Entity that is the general partner of Borrower, if Borrower is a limited partnership, or member of Borrower, if Borrower is a limited liability company.

“Proceeds” shall mean Insurance Proceeds or Condemnation Proceeds.

“Project” shall mean the development and construction of Project Improvements, all in accordance with the Plans and Specifications, all Legal Requirements, this Agreement and the other Loan Documents.

“Project Improvements” shall mean the demolition of all existing improvements located on the Land and the development and construction thereon by Borrower of a modern self-storage facility containing approximately 110,000 square feet of floor area, substantially as depicted on the Plans and Specifications, as the same will be developed, renovated and constructed in accordance with the Plans and Specifications and all Legal Requirements.

“Project Loan” shall mean the loan being made by Lender to Borrower pursuant to the Project Loan Agreement in the principal amount of up to the Project Loan Amount.

“Project Loan Advance” shall mean “Advance” as such term is defined in the Project Loan Agreement.

“Project Loan Agreement” shall mean that certain Project Loan Agreement dated the date hereof among, Lender and Borrower.

“Project Loan Amount” shall mean Four Million, Nine Hundred Twenty Thousand, Seven Hundred Thirty-Nine and 67/100 Dollars (\$4,920,739.67).

“Project Loan Assignment of Leases” shall mean that certain Project Loan Assignment of Leases and Rents, dated the date hereof, from Borrower, as assignor, to Lender, as assignee.

“Project Loan Budget” shall have the meaning set forth in **Section 2.1.14**.

“Project Loan Costs” shall mean all Projected Related Costs that are not Costs of the Improvements.

“Project Loan Documents” shall have the meaning as set forth in the Project Loan Agreement.

“Project Loan Earn Out Advance” shall have the meaning set forth in **Section 2.12.1** hereof.

“Project Loan Mortgage” shall have the meaning as set forth in the Project Loan Agreement.

“Project Loan Note” shall have the meaning as set forth in the Project Loan Agreement.

“Project-Related Costs” shall mean all direct and indirect costs and expenses of acquiring the Property, demolishing the existing improvements on the Property, designing, inspecting, renovating, constructing and developing the Project Improvements, including, without limitation, Hard Costs and Soft Costs, along with all Carrying Costs, Debt Service, financing charges, Operating Expense and other costs and expenses associated with the Property during the Construction Term.

“Property” shall mean the Land, all Improvements now or hereafter located thereon, the easements and other rights, licenses and privileges and appurtenance to the Land, and all personal property owned by Borrower and encumbered by the Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Mortgage and referred to therein as the “Mortgaged Property”.

“Provided Information” shall mean any and all financial and other information provided at any time prepared by, or on behalf of, any Indemnifying Person with respect to the Property, Borrower, Principal, Guarantor and/or Manager, including, without limitation, any financial data or financial statements required under Section 5.1.11.

“Punch List and Deferred Maintenance Reserve Deposit” shall have the meaning set forth in Section 7.4.1.

“Punch List and Deferred Maintenance Reserve Funds” shall have the meaning set forth in Section 7.4.1.

“Punch List Items” shall mean, collectively, any Punch List items identified by the Construction Consultant and other minor or insubstantial details of construction, decoration, mechanical adjustment or installation, which do not hinder or impede the use, operation, or maintenance of the Property or the ability to obtain a permanent certificate of occupancy with respect thereto.

“Qualified Manager” shall mean in the reasonable judgment of Lender, a reputable and experienced management organization (which may be an Affiliate of Borrower) possessing experience in managing properties similar in size, scope, use and value as the Property, *provided*, that Borrower shall have obtained (i) prior written confirmation from the applicable Rating Agencies that management of the Property by such Person will not cause a downgrade, withdrawal or qualification of the then current ratings of the Securities or any class thereof and (ii) if such Person is an Affiliate of Borrower, an Additional Insolvency Opinion.

“Rate Lock Agreement” shall mean that certain Extended Rate Lock Agreement-Application Stage dated April 23, 2007 between Borrower and Lender, as amended by that certain First Amendment to Extended Rate Lock Agreement-Application Stage dated as of the date hereof.

“Rating Agencies” shall mean each of S&P, Moody’s and Fitch, or any other nationally recognized statistical rating agency which has been approved by Lender.

“Related Entities” shall have the meaning set forth in Section 5.2.10(e).

“REMIC Trust” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds any portion of the Note.

“Rentable Space Percentage” shall have the meaning set forth in Section 6.2.4(a)(B)(iii).

“Rents” shall mean, all rents (including percentage rents), rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all other amounts payable as rent under any Lease or other agreement relating to the Property, including, without limitation, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, Operating Expenses or other reimbursables payable to Borrower (or to the Manager, for the account of Borrower) under any Lease, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Property, and proceeds, if any, from business interruption or other loss of income or insurance.

“Replacements” shall have the meaning set forth in Section 7.3.1.

“Replacement Management Agreement” shall mean, collectively, (a) either (i) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (ii) a management agreement with a Qualified Manager, which management agreement shall be reasonably acceptable to Lender in form and substance, *provided*, with respect to this subclause (ii), Lender, at its option, may require that Borrower shall have obtained prior written confirmation from the applicable Rating Agencies that such management agreement will not cause a downgrade, withdrawal or qualification of the then current rating of the Securities or any class thereof and (b) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or of such other form and substance reasonably acceptable to Lender), executed and delivered to Lender by Borrower and such Qualified Manager at Borrower’s expense.

“Replacement Reserve Account” shall have the meaning set forth in Section 7.3.1.

“Replacement Reserve Fund” shall have the meaning set forth in Section 7.3.1.

“Replacement Reserve Monthly Deposit” shall have the meaning set forth in Section 7.3.1.

“Requested Advance Date” shall have the meaning set forth in Section 2.14.2(a), hereof.

“Required Completion Date” shall mean June 1, 2009, provided, however, that the Required Completion Date may be extended by Lender to December 1, 2009 in Lender’s sole discretion.

“Required Equity Funds” shall have the meaning set forth in Section 2.11.13.

“Required Initial Advance Date” shall mean March 21, 2008, provided that Lender shall have the right to extend the Required Initial Advance Date in Lender’s sole discretion.

“Required Ratios at Completion” shall have the meaning set forth in Section 2.12(j) hereof.

“Reserve” or **“Reserve Funds”** shall mean, collectively, the Tax and Insurance Escrow Fund, the Interest Reserve Funds, the Excess Cash Flow Reserve Funds, the Replacement Reserve Fund, the Punch List and Deferred Maintenance Fund, the Operating Reserve Fund and any other escrow fund established by the Loan Documents.

“Restoration” shall mean the repair and restoration of the Property after a Casualty or Condemnation to substantially the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“Restoration Threshold” shall have the meaning set forth in Section 6.2.3(a) hereof.

“Restricted Party” shall mean collectively, (a) Borrower, any Guarantor, and any Affiliated Manager and (b) any shareholder, partner, member, non-member manager, any direct or indirect legal or beneficial owner of, Borrower, any Guarantor, any Affiliated Manager or any non-member manager.

“Retainage” shall mean, for each Contract and Subcontract, the greater of (a) ten percent (10%) of all costs funded to the Contractor or Subcontractor under the Contract or Subcontract, or (b) the actual retainage required under such Contract or Subcontract.

“S&P” shall mean Standard & Poor’s Ratings Group, a division of the McGraw-Hill Companies.

“Sale or Pledge” shall mean a voluntary or involuntary sale, conveyance, assignment, transfer, encumbrance, pledge, grant of option or other transfer or disposal of a legal or beneficial interest, whether direct or indirect.

“Scheduled Defeasance Payments” shall have the meaning set forth in Section 2.5.1(b).

“Second Tax and Insurance Escrow Deposit” shall have the meaning set forth in Section 7.1 hereof.

“**Securities**” shall have the meaning set forth in **Section 9.1** hereof.

“**Securities Act**” shall have the meaning set forth in **Section 9.2(a)** hereof.

“**Securitization**” shall have the meaning set forth in **Section 9.1** hereof.

“**Servicer**” shall have the meaning set forth in **Section 9.5** hereof.

“**Servicing Agreement**” shall have the meaning set forth in **Section 9.5** hereof.

“**Severed Loan Documents**” shall have the meaning set forth in **Section 8.2(c)** hereof.

“**Shortfall**” shall have the meaning set forth in **Section 2.1.10**.

“**Soft Costs**” shall mean those Building Loan Costs which are not Hard Costs, including but not limited to, architect’s, engineer’s and general contractor’s fees, interest on the Building Loan, recording taxes and title charges in respect of the Building Loan Mortgage and such other non-construction costs as are part of the Cost of the Improvements.

“**Special Purpose Entity**” shall mean a corporation, limited partnership or limited liability company that, since the date of its formation and at all times on and after the date thereof, has complied with and shall at all times comply with the following requirements unless it has received either prior consent to do otherwise from Lender or a permitted administrative agent thereof, or, while the Loan is securitized, confirmation from each of the applicable Rating Agencies that such noncompliance would not result in the requalification, withdrawal, or downgrade of the ratings of any Securities or any class thereof:

(i) is and shall be organized solely for the purpose of (A) in the case of Borrower, acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, entering into and performing its obligations under the Loan Documents with Lender, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (B) in the case of a Principal, acting as a general partner of the limited partnership that owns the Property or as member of the limited liability company that owns the Property and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to (A) the acquisition, development, ownership, management or operation of the Property, or (B) in the case of a Principal, acting as general partner of the limited partnership that owns the Property or acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not owned and shall not own any real property other than, in the case of Borrower, the Property;

(iv) does not have, shall not have and at no time had any assets other than (A) in the case of Borrower, the Property and personal property necessary or incidental to its ownership and operation of the Property or (B) in the case of a Principal, its partnership interest in the limited partnership or the member interest in the limited liability company that owns the Property and personal property necessary or incidental to its ownership of such interests;

(v) has not engaged in, sought, consented or permitted to and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents, or (C) in the case of a Principal, any transfer of its partnership or membership interests;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) if such entity is a limited partnership, has and shall have at least one general partner and has and shall have, as its only general partners, Special Purpose Entities each of which (A) is a corporation or single-member Delaware limited liability company, (B) has two (2) Independent Directors, and (C) holds a direct interest as general partner in the limited partnership of not less than 0.5% (or 0.1%, if the limited partnership is a Delaware entity);

(viii) if such entity is a corporation, has and shall have at least two (2) Independent Director, and shall not cause or permit the board of directors of such entity to take any Material Action either with respect to itself or, if the corporation is a Principal, with respect to Borrower or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless two Independent Directors shall have participated in such vote and shall have voted in favor of such action;

(ix) if such entity is a limited liability company (other than limited liability company meeting all of the requirements applicable to a single-member limited liability company set forth in this definition of "Special Purpose Entity"), has and shall have at least one (1) member that is a Special Purpose Entity, that is a corporation, that has at least two (2) Independent Directors and that directly owns at least one-half-of-one percent (0.5%) of the equity of the limited liability company (or 0.1% if the limited liability company is a Delaware entity);

(x) if such entity is a single-member limited liability company, (A) is and shall be a Delaware limited liability company, (B) has and shall have at least two (2) Independent Directors serving as a manager of such company, (C) shall not take any Material Action and shall not cause or permit the members or managers of such entity to take any Material Action, either with respect to itself or, if the company is a Principal,

with respect to Borrower, in each case unless one Independent Director then serving as a manager of the company shall have participated and consented in writing to such action, and (D) has and shall have either (1) a member which owns no economic interest in the company, has signed the company's limited liability company agreement and has no obligation to make capital contributions to the company, or (2) two natural persons or one entity that is not a member of the company, that has signed its limited liability company agreement and that, under the terms of such limited liability company agreement becomes a member of the company immediately prior to the withdrawal or dissolution of the last remaining member of the company;

(xi) has not and shall not (and, if such entity is (a) a limited liability company, has and shall have a limited liability agreement or an operating agreement, as applicable, (b) a limited partnership, has a limited partnership agreement, or (c) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity shall not) (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Lender; or (4) without the affirmative vote of two (2) Independent Directors or Independent Managers of itself or the consent of a Principal that is a member or general partner in it: (A) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the entity or a substantial portion of its property; (C) make an assignment for the benefit of the creditors of the entity; or (D) take any action in furtherance of any of the foregoing;

(xii) has at all times been and shall at all times remain solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and has maintained and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xiii) has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) has held and shall hold its assets in its own name;

(xviii) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially-reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity;

(xx) has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and shall maintain a sufficient number of employees in light of its contemplated business operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) shall have no Indebtedness other than (i) the Loan, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of Borrower, in amounts not to exceed \$323,000, which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a

note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to this Agreement;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets for the benefit of any other Person, in each case except as permitted pursuant to this Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing (individually, a "Related Party" and collectively, the "Related Parties"), including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property and no such pledge remains outstanding except to Lender to secure the Loan;

(xxix) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person;

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxi) has not made and shall not make loans to any Person and has not held and shall not hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(xxxii) has not identified and shall not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(xxxiii) other than capital contributions and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not

enter into or be a party to, any transaction with any of its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxxiv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxv) if such entity is a corporation, has considered and shall consider the interests of its creditors in connection with all corporate actions;

(xxxvi) has not had and shall not have any of its obligations guaranteed by any Affiliate except as provided by the Loan Documents;

(xxxvii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary, except that a Principal may acquire and hold its interest in Borrower;

(xxxviii) has complied and shall comply with all of the terms and provisions contained in its organizational documents.

(xxxix) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion are true;

(xl) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xli) is, has always been and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;

(xlii) has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority;

(xliii) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that resulted in a judgment against it that has not been paid in full;

(xliv) has no judgments or Liens of any nature against it except for tax liens not yet due and the Permitted Encumbrances;

(xlv) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition; and

(xlvi) has no material contingent or actual obligations not related to the Property.

“**Stabilized Net Cash Flow**” shall mean underwritten Gross Income from Operations calculated using an vacancy rate equal to the greater of five percent (5%), the actual vacancy rate for the Property and the market vacancy rate (“**Effective Gross Income**”), less (i) Operating Expenses including a management fee of not less than six percent (6%) of Effective Gross Income and (ii) an adjustment for Replacement Reserves of \$16,500.00 per annum.

“**Stabilized Value**” shall mean the value of the Property, determined following the Completion of the Improvements. The Stabilized Value shall be determined based upon an MAI appraisal performed, at Borrower’s sole cost and expense, by an appraiser approved by Lender and dated, or updated, to a date within 30 days or the date of the Completion of the Improvement occurs made in compliance with FIRREA and reasonably satisfactory to Lender in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender’s internal appraisal staff, whose decision shall be final absent manifest error.

“**Stabilized Loan-to-Value Ratio**” shall mean the ratio of the Total Loan Amount to the Stabilized Value.

“**State**” shall mean, the State or Commonwealth in which the Property or any part thereof is located.

“**Stored Materials**” shall have the meaning set forth in [Section 2.1.8](#) hereof.

“**Subcontract**” shall mean shall mean any agreement (other than the Architect’s Contract and the General Contractor’s Agreement) entered into by Borrower or by General Contractor, in which the Subcontractor thereunder agrees to provide services, labor and/or materials in connection with the Project Improvements.

“**Subcontractor**” shall mean any subcontractor supplying services, labor and/or materials in connection with the Project Improvements.

“**Subordinate Financing**” shall have the meaning set forth in [Section 9.1.2\(b\)](#).

“**Successor Borrower**” shall have the meaning set forth in [Section 2.5.3](#) hereof.

“**Survey**” shall mean a survey of the Property prepared by a Surveyor licensed in the State and satisfactory to Lender and the company or companies issuing the Title Insurance Policy, and containing a certification of such surveyor satisfactory to Lender.

“**Surveyor**” shall mean Control Point Associates, Inc., or such other land surveyor registered as such in the State of New York.

“**Tax and Insurance Escrow Fund**” shall have the meaning set forth in [Section 7.1](#) hereof.

“**Taxes**” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

“**Tenant**” shall mean the tenant under any Lease.

“**Threshold Amount**” shall have the meaning set forth in **Section 5.1.21(a)** hereof.

“**Title Company**” shall have the meaning set forth in **Section 3.1.3(b)** hereof.

“**Title Insurance Policy**” shall mean, an ALTA mortgagee title insurance policy in the form acceptable to Lender (or, if the Property is in a State which does not permit the issuance of such ALTA policy, such form as shall be permitted in such State and acceptable to Lender) issued with respect to the Property and insuring the lien of the Mortgage.

“**Total Debt**” shall mean, collectively, the Debt and Other Debt.

“**Total Debt Service**” shall mean, with respect to any particular period of time, scheduled payments of principal, if any, and interest under the Building Loan, the Project Loan and, if applicable, the Subordinate Financing.

“**Total Loan Amount**” shall mean the sum of the Building Loan Amount, the Project Loan Amount and the Subordinate Financing, if applicable.

“**Transfer**” shall have the meaning set forth in **Section 5.2.10(b)** hereof.

“**Transferee**” shall have the meaning set forth in **Section 5.2.10(e)**.

“**Transferee’s Principals**” shall mean collectively, (A) Transferee’s managing members, general partners or principal shareholders and (B) such other members, partners or shareholders which directly or indirectly shall own a fifty-one percent (51%) or greater economic and voting interest in Transferee.

“**UCC**” or “**Uniform Commercial Code**” shall mean the Uniform Commercial Code as in effect in the State in which the Property is located.

“**Unsatisfied Initial Advance Conditions**” shall have the meaning set forth in **Section 2.1.20**.

“**U.S. Obligations**” shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Rating Agencies, other “**government securities**” within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

“**Yield Maintenance Default Premium**” shall mean an amount equal to the greater of (a) five percent (5%) of the outstanding principal balance of the Loan to be prepaid or satisfied and (b) the Defeasance Payment Amount that would be required if a Defeasance Event were to occur at such time (whether or not then permitted) in an amount equal to the outstanding principal amount of the Loan to be prepaid or satisfied.

Yield Maintenance Premium” shall mean an amount equal to the greater of (a) one percent (1%) of the outstanding principal of the Loan to be prepaid or satisfied and (b) the excess, if any, of (i) the sum of the present values of all then-scheduled payments of principal and interest under the Note assuming that all outstanding principal and interest on the Loan is paid on the Open Period Date (with each such payment and assumed payment discounted to its present value at the date of prepayment at the rate which, when compounded monthly, is equivalent to the Prepayment Rate when compounded semi-annually and deducting from the sum of such present values any short-term interest paid from the date of prepayment to the next succeeding Payment Date in the event such payment is not made on a Payment Date), over (ii) the principal amount being prepaid.

Section 1.2 Principles of Construction. All references to sections and schedules are to sections and schedules in or to this Agreement unless otherwise specified. All uses of the word “including” shall mean “including, without limitation” unless the context shall indicate otherwise. Any reference in this Agreement or in any other Loan Document to any Loan Document shall be deemed to include references to such documents as the same may hereafter be amended, modified, supplemented, extended, replaced and/or restated from time to time (and, in the case of any note or other instrument, to any instrument issued in substitution therefor). Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined.

ARTICLE II.

GENERAL TERMS

Section 2.1 **Loan Commitment; Disbursement to Borrower.**

2.1.1 **Agreement to Lend and Borrow.** Subject to and upon the terms and conditions set forth herein, Lender hereby agrees to make and Borrower hereby agrees to accept Advances in respect of the Building Loan as more particularly set forth in **Section 2.10.**

2.1.2 **No Reborrowings.** Any amount borrowed and repaid hereunder in respect of the Building Loan may not be reborrowed.

2.1.3 **The Note, Mortgage and Loan Documents.** The Building Loan shall be evidenced by the Building Loan Note and secured by the Building Loan Mortgage, the Building Loan Assignment of Leases and the other Building Loan Documents.

2.1.4 **Use of Proceeds.** Borrower hereby agrees that Borrower shall use the proceeds of the Building Loan to pay or reimburse itself for Building Loan Costs actually incurred in connection with demolition and the construction of the Project Improvements if and to the extent that such Building Loan Costs are reflected in the Building Loan Budget, subject to reallocation pursuant to **Sections 2.1.6, 2.1.7 and 5.1.33** (or other reallocations approved by Lender in its sole discretion).

2.1.5 Advances. Lender shall not be required to Advance funds hereunder for any category or line item of Building Loan Costs in excess of the amount specified for such line item or category in the Building Loan Budget, subject to Sections 2.1.6, 2.1.7 and 5.1.33 (or other reallocations approved by Lender in its sole discretion). No Advances shall be made to pay for Affiliate Fees.

2.1.6 Cost Overruns. If Borrower becomes aware of any change in actual or projected Project-Related Costs which will increase any one or more category or line item of costs reflected in the Development Budget, Borrower shall immediately notify Lender in writing and promptly submit to Lender for its approval a revised Development Budget. Any reallocation of any category or line items in the Development Budget in connection with cost overruns shall be subject to Lender's approval in Lender's sole discretion except as set forth in Sections 2.1.7 and 5.1.33, provided, however, under no circumstances shall Borrower be permitted, or Lender obligated to approve, the reallocation of line items from the Building Loan Budget to the Project Loan Budget. Lender shall have no obligation to make any further Advances unless and until the revised Development Budget so submitted by Borrower is approved by Lender and Borrower has satisfied its obligations with respect to any resulting Shortfall under Section 2.1.10. Lender reserves the right to approve or disapprove any revised Development Budget in its sole and absolute discretion (except with respect to reallocations in accordance with Sections 2.1.7 and 5.1.33).

2.1.7 Contingency Reserve. Following the satisfaction of the Initial Advance Conditions, and subject to the prior approval of Lender in its sole discretion, Borrower may revise the Building Loan Budget to move (i) amounts available under any Line Item for Hard Costs that are designated to "Contingency" to other Line Items for Hard Costs in the Building Loan Budget, or (ii) amounts available under any Line Item for Soft Costs that are designated "Contingency" to other Line Items for Soft Costs in the Building Loan Budget. Any cost savings shall be allocated in accordance with Section 5.1.33 hereof. In no event may the Contingency Line Item of the Building Loan Budget be reallocated to any Line Item in the Project Loan Budget. The Contingency Line Item in the Building Loan Budget for Hard Costs shall contain at least five percent (5%) of the total projected Hard Costs, separate from the Contingency Line Items in the Project Loan Budget.

2.1.8 Stored Materials. Lender shall not be required to disburse any funds for any materials, machinery or other Personal Property not yet incorporated into the Project Improvements (the "**Stored Materials**"), unless the following conditions are satisfied:

(a) Borrower shall deliver to Lender bills of sale or other evidence reasonably satisfactory to Lender of the cost of, and, subject to the payment therefor, Borrower's title in and to such Stored Materials;

(b) The Stored Materials are identified to the Property and Borrower, are segregated so as to adequately give notice to all third parties of Borrower's title in and to such materials, and are components in substantially final form ready for incorporation into the Project Improvements;

(c) The Stored Materials are stored at the Property or at such other third-party owned and operated site as Lender shall reasonably approve, and are protected against theft and damage in a manner satisfactory to Lender, including, if requested by Lender, storage in a bonded warehouse in the greater metropolitan area in which the Property is located;

(d) The Stored Materials will be paid for in full with the funds to be disbursed, and all lien rights or claims of the supplier will be released upon full payment;

(e) Lender has or will have upon payment with disbursed funds a perfected, first priority security interest in the Stored Materials;

(f) The Stored Materials are insured for an amount equal to their replacement costs in accordance with **Section 6.1** of this Agreement;

(g) The aggregate cost of Stored Materials stored at the Property is approved by the Construction Consultant and, if required by Lender, the Construction Consultant shall certify that it has inspected such Stored Materials and they are in good condition and suitable for use in connection with the Project Improvements; and

(h) The aggregate cost of Stored Materials stored on the Property at any one time shall not exceed ten percent (10%) of the maximum amount of the Loan and the aggregate cost of Stored Materials stored off the Property at any one time shall not exceed five percent (5%) of the maximum amount of the Loan.

2.1.9 Amount of Advances. In no event shall any Advance exceed the full amount of Building Loan Costs theretofore paid or to be paid with the proceeds of such Advance plus any Building Loan Costs incurred by Borrower through the date of the Draw Request for such Advance minus (i) the applicable Retainage for each Contract and Subcontract, and (ii) the aggregate amount of any Advances previously made by Lender. It is further understood that the Retainage described above is intended to provide a contingency fund protecting Lender against failure of Borrower or Guarantor to fulfill any obligations under the Loan Documents, and that Lender may charge amounts to pay for Building Loan Costs against such Retainage in the event Lender is required or elects to expend funds to cure any Default or Event of Default, in either instance, in accordance with the terms of this Agreement. No Advance of the Loan by Lender shall be deemed to be an approval or acceptance by the Lender of any work performed thereon or the materials furnished with respect thereto.

2.1.10 Loan-In-Balance. As used herein, a “**Shortfall**” shall mean, as to any Line Item in the Development Budget as of any date, the amount determined by Lender, in Lender’s sole but reasonable judgment, by which (A) the cost of completing or satisfying such Line Item, exceeds (B) the remaining undisbursed portion of the Loan allocated to such Line Item in the Development Budget plus any sums deposited with Lender pursuant to this **Section 2.1.10** to pay for such Line Item and not previously disbursed plus any Reserve Funds to the extent such Reserve Funds are available hereunder for the payment of such Line Item. From time to time and at any time during the Construction Period, Lender shall have the right, but not the obligation, to notify Borrower that it has determined a Shortfall exists as to any one or more Line Items. If Lender at any time shall so notify Borrower, Borrower shall, at its option within

five (5) days of Lender's notification as aforesaid, either: (i) deposit with Lender an amount equal to such Shortfall, which Lender disburse to Borrower to the satisfaction of the costs of such Line Item prior to advancing any further Loan proceeds on account of such costs; (ii) post an irrevocable standby Letter of Credit in the amount of such Shortfall, in favor of Lender; (iii) to the extent permitted under **Sections 2.1.7 and 5.1.33**, and following the satisfaction of the Initial Advance Conditions allocate the Contingency Reserve, with respect to the Line Item(s) in question, to the Shortfall, and provided, further that the amount of the remaining Contingency Reserve for such Line Item(s) (following the allocation to the Shortfall) is sufficient for such Line Item(s), as determined by Lender in its sole discretion; and (iv) to the extent permitted under **Section 5.1.33**, and then only following the satisfaction of the Initial Advance Conditions, reallocate cost savings from the Development Budget in respect of the Loan (or other reallocations which are approved by Lender, in its sole discretion) in accordance with the terms of this Agreement, but only to the extent such cost savings can be allocated to the related Line Items. Borrower hereby agrees that Lender shall have a lien on and security interest in, for the benefit of Lender, any sums deposited pursuant to clause (i) above and that Borrower shall have no right to withdraw any such sums except for the payment of the aforesaid costs as approved by Lender. Lender shall have no obligation to make any further Advances of proceeds of the Loan as to any Line Item until the sums required to be deposited pursuant to clause (i) above as to such Line Item have been exhausted, or until Borrower has posted an irrevocable standby Letter of Credit pursuant to clause (iii) above, as the case may be, and, in any such case, the Loan is back "in balance". Any such sums not used as provided in said clause (i) shall be released to Borrower when and to the extent that Lender reasonably determines that the amount thereof is more than the excess, if any, of the remaining Project-Related Costs over the undisbursed balance of the Loan, provided, however, that should an Event of Default occur, Lender, in its sole discretion, may apply such amounts either to the remaining Project-Related Costs or to the immediate reduction of outstanding principal and/or interest under the Note.

2.1.11 **Quality of Work.** No Advance or any portion thereof shall be made with respect to defective work or to any contractor that has performed work that is defective and that has not been cured, as confirmed by the report of the Construction Consultant, but Lender may disburse all or part of any Advance before the sum shall become due if Lender believes it advisable to do so, and all such Advances or parts thereof shall be deemed to have been made pursuant to this Agreement.

2.1.12 **Required Equity Funds.** All Required Equity Funds shall be contributed (*i.e.*, expended by Borrower and invested by Borrower in the Property, for Project—Related Costs set forth on the approved Development Budget) before the Closing Date.

2.1.13 **Trust Fund.** Pursuant to Section 13 of the New York Lien Law, Borrower shall receive the Advances hereunder and shall hold the right to receive the Advances as a trust fund to be applied first for the purpose of paying the Costs of the Improvements and shall apply the Advances first to the payment of the Cost of the Improvements on the Property before using any part of the total of the same for any other purpose.

2.1.14 **Final Project Report and Development Budget.** Attached hereto as **Schedule II** is Borrower's detailed and definitive budget of all Project-Related Costs to be incurred by Borrower during the Construction Term and that will be disbursed out of Loan

proceeds subject to availability and satisfaction of all applicable conditions to Advances hereunder and under the Project Loan Agreement, being so indicated, delineated by each category of Project-Related Costs (each a “**Line Item**” or “**Budget Line**”) and further broken down to segregate Building Loan Costs and Project Loan Costs, which budget has been approved by Lender and Construction Consultant (the “**Development Budget**”). The portion of the Development Budget that includes only Building Loan Costs is referred to herein as the “**Building Loan Budget**” and the portion of the Development Budget that includes only Project Loan Costs is referred to herein as the “**Project Loan Budget**.”

2.1.15 Miscellaneous.

(a) The making of an Advance by Lender shall not constitute Lender’s approval or acceptance of the construction theretofore completed. Lender’s inspection and approval of the Plans and Specifications, the construction of the Project Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Lender, the sole obligation of Lender as the result of such inspection and approval being to make the Advances if and to the extent, required by this Agreement.

(b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT LENDER TO MAKE ADVANCES OF THE LOAN IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. MOREOVER, ALL POTENTIAL LIENORS ARE REMINDED THAT SUBDIVISION (3) OF SECTION 13 OF THE NEW YORK LIEN LAW PROVIDES THAT “NOTHING IN THIS SUBDIVISION SHALL BE CONSIDERED AS IMPOSING UPON THE LENDER ANY OBLIGATION TO SEE THE PROPER APPLICATION OF SUCH ADVANCES BY THE OWNER,” AND LENDER DOES NOT IMPOSE SUCH AN OBLIGATION ON ITSELF.

Section 2.2 Interest Rate.

2.2.1 Interest Rate. Interest on the outstanding principal balance of the Loan shall accrue from (and include) the Closing Date to but excluding the Maturity Date at the Interest Rate calculated as set forth in Section 2.2.2 below.

2.2.2 Interest Calculation. Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (a) the actual number of days elapsed in the period for which the calculation is being made by (b) a daily rate based on the Interest Rate and a three hundred sixty (360) day year by (c) the outstanding principal balance.

2.2.3 Default Rate. In the event that, and for so long as, any Event of Default shall have occurred and be continuing, the outstanding principal balance of the Loan and, to the extent permitted by law, all accrued and unpaid interest in respect of the Loan and any other amounts due pursuant to the Loan Documents, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.4 *Usury Savings*. This Agreement, the Note and the other Loan Documents are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the principal balance of the Loan at a rate which could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, by the terms of this Agreement or the other Loan Documents, Borrower is at any time required or obligated to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as the case may be, shall be deemed to be immediately reduced to the Maximum Legal Rate and all previous payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate of interest from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

Section 2.3 **Loan Payment.**

2.3.1 *Monthly Debt Service Payments*. Borrower shall pay to Lender (a) on the Closing Date, an amount equal to interest only on the outstanding principal balance of the Loan from and including the Closing Date up to and including December 31, 2007, which interest shall be calculated in accordance with the provisions of **Section 2.2** hereof, and (b) on each Payment Date commencing on the Payment Date occurring in February, 2008 and thereafter up to and including the Maturity Date, Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount, which payments shall be applied first to interest due for the related Interest Period at the Interest Rate, for such related Interest Period and then to the principal amount of the Loan due in accordance with this Agreement, and lastly, to any other amounts due and unpaid pursuant to the Loan Documents hereto. Borrower and Lender acknowledge and agree that, on the 15th calendar day of the month preceding each Payment Date during the Construction Term: (a) if and to the extent undrawn funds remain available for Advance under the Project Loan from the Interest Reserve Line Item of the Project Loan Budget, and provided that that no Event of Default or monetary Default then exists under any of the Loan Documents or would occur as a result of such Project Loan Advance, the Monthly Debt Service Amount then due and owing shall be advanced by Lender by a Project Loan Advance under Interest Reserve Line Item of the Project Loan Budget; and (b) if no amount remains available under the Interest Reserve Line Item but and to the extent Interest Reserve Funds are on deposit in the Interest Reserve Account, and no Event of Default or monetary Default then exists under any of the Loan Documents, the Monthly Debt Service Payment Amount then due and payable shall be paid by application of funds from the Interest Reserve Account. Borrower and Lender acknowledge and agree that Lender may automatically make a Project Loan Advance or apply Interest Reserve Funds on deposit in the Interest Reserve Account on each Payment Date occurring during the Construction Term, in either instance, in accordance with this **Section 2.3.1**, without the need for Borrower to submit a Draw Request or otherwise request such an Advance or application.

2.3.2 *Payments Generally*. The first Interest Period hereunder shall commence on and include the Closing Date and shall end on and include December 31, 2007. Thereafter

each Interest Period shall commence on the first (1st) day of each calendar month during the term of this Agreement and shall end on and include the final calendar date of such calendar month. For purposes of making payments hereunder, but not for purposes of calculating Interest Periods, if the day on which such payment is due is not a Business Day, then amounts due on such date shall be due on the immediately preceding Business Day and with respect to payments of principal due on the Maturity Date, interest shall be payable at the Interest Rate or the Default Rate, as the case may be, through and including the day immediately preceding such Maturity Date. All amounts due under this Agreement and the other Loan Documents shall be payable without setoff, counterclaim, defense or any other deduction whatsoever.

2.3.3 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date the outstanding principal balance of the Loan, all accrued and unpaid interest and all other amounts due hereunder and under the Note, the Mortgage and the other Loan Documents.

2.3.4 Late Payment Charge. If any principal, interest or any other sums due under the Loan Documents (including the amounts due on the Maturity Date) are not paid by Borrower on or prior to the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of such unpaid sum or the Maximum Legal Rate in order to defray the expense incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Mortgage and the other Loan Documents to the extent permitted by applicable law.

2.3.5 Method and Place of Payment. Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Note shall be made to Lender not later than 11:00 A.M., New York City time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds at Lender's office or as otherwise directed by Lender, and any funds received by Lender after such time shall, for all purposes hereof, be deemed to have been paid on the next succeeding Business Day.

Section 2.4 Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise provided in this Section 2.4.1 and Section 2.4.2, Borrower shall not have the right to prepay the Loan in whole or in part prior to the Maturity Date. If for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment. Notwithstanding anything to the contrary contained herein, commencing after the Payment Date three (3) months prior to the Maturity Date (the "**Open Period Date**"), or on any Payment Date thereafter (or on any date thereafter, provided that interest is paid through the next Payment Date), Borrower may, at its option, prepay the Debt in whole, but not in part, without payment of the Yield Maintenance Premium.

2.4.2 Mandatory Prepayments. On the next occurring Payment Date following the date on which Lender actually receives any Net Proceeds, if Lender is not

obligated to make such Net Proceeds available to Borrower for the Restoration of the Property or otherwise remit such Net Proceeds to Borrower pursuant to **Section 6.4** hereof, Borrower shall prepay or authorize Lender to apply Net Proceeds as a prepayment of all or a portion of the outstanding principal balance of the Loan together with accrued interest through the end of the related Interest Period and any other sums due hereunder in an amount equal to one hundred percent (100%) of such Net Proceeds; *provided, however*, if an Event of Default has occurred and is continuing, Lender may apply such Net Proceeds to the Debt (until paid in full) in any order or priority in its sole discretion. Other than following an Event of Default, no Yield Maintenance Premium shall be due in connection with any prepayment made pursuant to this **Section 2.4.2**.

2.4.3 *Prepayments After Default*. If following an Event of Default, payment of all or any part of the Debt is tendered by Borrower or otherwise recovered by Lender, such tender or recovery shall be (a) made on the next occurring Payment Date together with the Monthly Debt Service Payment and (b) deemed a voluntary prepayment by Borrower in violation of the prohibition against prepayment set forth in **Section 2.4.1** hereof and Borrower shall pay, in addition to the Debt, an amount equal to the Yield Maintenance Default Premium.

2.4.4 *Prepayment Prior to Defeasance Expiration Date*. If the Permitted Release Date has occurred but the Defeasance Expiration Date has not occurred, the Debt may be prepaid in whole (but not in part) prior to the date permitted under Section 2.4.1 hereof upon not less than thirty (30) days prior written notice to Lender specifying the Payment Date on which prepayment is to be made (a “**Prepayment Date**”) provided no Event of Default exists and upon payment of an amount equal to the Yield Maintenance Premium. Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. If any notice of prepayment is given, the Debt shall be due and payable on the Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith. If for any reason Borrower prepays the Loan on a date other than a Payment Date, Borrower shall pay Lender, in addition to the Debt, all interest which would have accrued on the amount of the Loan through and including the Payment Date next occurring following the date of such prepayment.

2.4.5 *Application of Prepayments to Components*. Any prepayment of the principal of the Loan, in whole or in part, voluntary or involuntary, shall be applied (a) first, to the reduction of the outstanding principal balance of the Project Loan until reduced to zero, and (b) second, to the reduction of the outstanding principal balance of the Building Loan until reduced to zero. Subsequent to any Event of Default, any payment of principal from whatever source may be applied by Lender between the various components of the Loan in Lender’s sole discretion.

Section 2.5 **Defeasance**.

2.5.1 *Voluntary Defeasance* (a) Provided no Event of Default shall then exist, Borrower shall have the right at any time after the Defeasance Expiration Date and prior to the date voluntary prepayments are permitted under Section 2.4.1 hereof to voluntarily defease all, but not part, of the Loan by and upon satisfaction of the following conditions (such event being a “**Defeasance Event**”)

(i) Borrower shall provide not less than thirty (30) days prior written notice to Lender specifying the Payment Date (the “**Defeasance Date**”) on which the Defeasance Event is to occur;

(ii) Borrower shall pay to Lender all accrued and unpaid interest on the principal balance of the Loan to and including the Defeasance Date. If for any reason the Defeasance Date is not a Payment Date, the Borrower shall also pay interest that would have accrued on the Note through and including the Payment Date immediately preceding the next Payment Date, provided, however, if the Defeasance Deposit shall include short-term interest computed from the date of such prepayment through to the next succeeding Payment Date, Borrower shall not be required to pay such short term interest pursuant to this sentence;

(iii) Borrower shall pay to Lender all other sums, not including scheduled interest or principal payments, then due under the Note, this Agreement, the Mortgage and the other Loan Documents;

(iv) Borrower shall use the Defeasance Deposit to purchase U.S. Obligations in accordance with **Section 2.5.1(b)** below;

(v) Borrower shall execute and deliver a pledge and security agreement, in form and substance that would be reasonably satisfactory to a prudent lender creating a first priority lien on the Defeasance Deposit and the U.S. Obligations purchased with the Defeasance Deposit in accordance with the provisions of this **Section 2.5** (the “**Security Agreement**”);

(vi) Borrower shall deliver an opinion of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that Borrower has legally and validly transferred and assigned the U.S. Obligations and all obligations, rights and duties under and to the Note to the Successor Borrower, that Lender has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations delivered by Borrower and that any REMIC Trust formed pursuant to a Securitization will not fail to maintain its status as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code as a result of such Defeasance Event;

(vii) Borrower shall deliver confirmation in writing from each of the applicable Rating Agencies to the effect that such release will not result in a downgrade, withdrawal or qualification of the respective ratings in effect immediately prior to such Defeasance Event for the Securities issued in connection with the Securitization which are then outstanding. If required by the applicable Rating Agencies, Borrower shall also deliver or cause to be delivered an Additional Insolvency Opinion with respect to the Successor Borrower in form and substance satisfactory to Lender and the applicable Rating Agencies;

(viii) Borrower shall deliver an Officer's Certificate certifying that the requirements set forth in this **Section 2.5.1(a)** have been satisfied;

(ix) Borrower shall deliver a certificate of Borrower's independent certified public accountant certifying that the U.S. Obligations purchased with the Defeasance Deposit generate monthly amounts equal to or greater than the Scheduled Defeasance Payments;

(x) Borrower shall deliver such other certificates, documents or instruments as Lender may reasonably request; and

(xi) Borrower shall pay all costs and expenses of Lender incurred in connection with the Defeasance Event, including (A) any costs and expenses associated with a release of the Lien of the Mortgage as provided in **Section 2.6** hereof, (B) reasonable attorneys' fees and expenses incurred in connection with the Defeasance Event, (C) the costs and expenses of the Rating Agencies, (D) any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note, or otherwise required to accomplish the defeasance and (E) the costs and expenses of Servicer and any trustee, including reasonable attorneys' fees.

(b) In connection with the Defeasance Event, Borrower shall use the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled Payment Dates after the Defeasance Date upon which interest and principal payments are required under this Agreement and the Note, and in amounts equal to the scheduled payments due on such Payment Dates under this Agreement and the Note (including, without limitation, scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Payment Dates) and assuming the Note is prepaid in full on the Open Period Date (the "**Scheduled Defeasance Payments**"). Borrower, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to the Clearing Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service obligations of Borrower under this Agreement and the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by this **Section 2.5** and satisfy Borrower's other obligations under this **Section 2.5** and **Section 2.6** shall be remitted to Borrower.

2.5.2 Collateral. Each of the U.S. Obligations that are part of the defeasance collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be satisfactory to a prudent lender (including, without limitation, such instruments as may be required by the depository institution holding such securities or by the issuer thereof, as the case may be, to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to perfect upon the delivery of the defeasance collateral a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing the granting of such security interests.

2.5.3 *Successor Borrower*. In connection with any Defeasance Event, Borrower shall establish a successor entity (the “**Successor Borrower**”), which shall be a Special Purpose Entity, which shall not own any other assets or have any other liabilities or operate other property (except in connection with other defeased loans held in the same securitized loan pool with the Loan). Borrower shall transfer and assign all obligations, rights and duties under and to the Note, together with the pledged U.S. Obligations to such Successor Borrower. Such Successor Borrower shall assume the obligations under the Note and the Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay One Thousand and 00/100 Dollars (\$1,000) to any such Successor Borrower as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Agreement to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this **Section 2.5.3**, but Borrower shall pay all costs and expenses incurred by Lender, including Lender’s attorneys’ fees and expenses and any fees and expenses of any Rating Agencies, incurred in connection therewith.

Section 2.6 **Release of Property**. Except as set forth in this **Section 2.6**, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Mortgage on the Property.

2.6.1 *Release of Property*.

(a) If Borrower has elected to defease the Loan and the requirements of **Section 2.5** and this **Section 2.6** have been satisfied, all of the Property shall be released from the Lien of the Mortgage and the U.S. Obligations, pledged pursuant to the Security Agreement, shall be the sole source of collateral securing the Note.

(b) In connection with the release of the Mortgage, Borrower shall submit to Lender, not less than thirty (30) days prior to the Defeasance Date, a release of Lien (and related Loan Documents) for the Property for execution by Lender. Such release shall be in a form appropriate in the jurisdiction in which the Property is located and that would be satisfactory to a prudent lender and contains standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other documentation Lender reasonably requires to be delivered by Borrower in connection with such release, together with an Officer’s Certificate certifying that such documentation (i) is in compliance with all Legal Requirements, and (ii) will effect such releases in accordance with the terms of this Agreement.

2.6.2 *Release on Payment in Full*. Lender shall, upon the written request and at the expense of Borrower, upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the terms and provisions of the Note and this Agreement, release the Lien of the Mortgage on the Property.

Section 2.7 **Clearing Account/Cash Management**. On or prior to the Closing Date, Borrower shall, at its sole cost and expense, cause each of the following to occur to the satisfaction of Lender (collectively, the “**Cash Management Conditions**”): (a) Borrower shall establish an Eligible Account (the “**Clearing Account**”) with an Eligible Institution selected by Borrower and approved by Lender (the “**Clearing Bank**”); (b) Borrower shall cause the Clearing Bank to execute and deliver the Clearing Account Agreement in accordance with **Section**

2.7.1(b); (c) Borrower shall establish an Eligible Account (the “**Cash Management Account**”) with an the Cash Management Bank designated by Lender pursuant to and in accordance with the Cash Management Agreement and **Section 2.7.2** hereof; (d) Borrower shall deliver a Payment Direction Letter to the Tenant under any Lease then or thereafter in effect and provide Lender with reasonably satisfactory evidence that the Tenant under such Lease has confirmed that it shall comply with the terms thereof; (e) Borrower will take all actions necessary to establish and maintain in favor of Lender a perfected first priority security interest in the Clearing Account and Cash Management Account and all deposits at any time contained in either such account and the proceeds thereof, including, without limitation, executing and filing UCC-1 Financing Statements; (f) Borrower shall deliver to Lender an opinion of Borrower’s counsel with respect to the due execution, authority, enforceability of the Cash Management Agreement and Clearing Account Agreement and confirming that Lender has first priority perfected security interest in the Cash Management Account and Clearing Account and such other matters as Lender may reasonably require, all such opinions in form, scope and substance satisfactory to Lender and Lender’s counsel; and (g) Borrower shall reimburse Lender for any and all cost and expenses, including reasonable attorney’s fees and disbursements, resulting from the foregoing.

2.7.1 Clearing Account.

(a) Borrower shall establish and maintain the Clearing Account with the Clearing Bank on or prior to the Closing Date, and thereafter Borrower shall maintain the Clearing Account at all times during the remainder of the term of the Loan. The Clearing Account shall be entitled “Acadia Atlantic Avenue LLC, as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 26, 2007 — Clearing Account”. Borrower hereby grants to Lender a first-priority security interest in the Clearing Account and all deposits at any time contained therein and the proceeds thereof. All monies now or hereafter deposited into the Clearing Account shall be deemed additional security for the Debt.

(b) Borrower shall obtain from the Clearing Bank and deliver to Lender an agreement, in form and substance satisfactory to Lender (the “**Clearing Account Agreement**”), pursuant to which: (i) Borrower and Clearing Bank acknowledge and agree that during a Cash Trap Period, Lender shall have the sole right to make withdrawals from the Clearing Account and all costs and expenses for establishing and maintaining the Clearing Account shall be paid by Borrower; (ii) upon notice from Lender that a Cash Trap Period exists, the Clearing Bank agrees to transfer to the Cash Management Account in immediately available funds by federal wire transfer all amounts on deposit in the Clearing Account once every Business Day during the term of the Loan.

(c) Borrower shall (i) deliver irrevocable written instructions to all tenants under Leases to deliver all Rents (including additional rent, payable thereunder directly to the Clearing Account, and (ii) deliver irrevocable written instructions to each of the credit card companies or credit card clearing banks with which Borrower or Manager has entered into merchant’s agreements to deliver all receipts payable with respect to the Property directly to the Clearing Account (collectively, the “**Payment Direction Letters**.”). Borrower and Manager shall deposit all amounts received by Borrower or Manager constituting Rents into the Clearing Account within one (1) Business Day after receipt thereof.

(d) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Clearing Account to the payment of the Debt in any order in its sole discretion.

(e) The Clearing Account shall be an Eligible Account and shall not be commingled with other monies held by Borrower or Clearing Bank.

(f) Borrower shall not further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(g) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Clearing Account and/or the Clearing Account Agreement (unless arising from the gross negligence or willful misconduct of Lender) or the performance of the obligations for which the Clearing Account was established.

2.7.2 Cash Management Account.

(a) Pursuant to and in accordance with the Cash Management Agreement, Borrower shall establish and maintain a segregated Eligible Account (the “**Cash Management Account**”) to be held by an Eligible Institution selected by Lender (the “**Cash Management Bank**”) in trust and for the benefit of Lender, which Cash Management Account shall be under the sole dominion and control of Lender. The Cash Management Account shall be entitled “Acadia Atlantic Avenue LLC as Borrower and Bear Stearns Commercial Mortgage, Inc., as Lender, pursuant to Loan Agreement dated as of December 26, 2007 — Cash Management Account.” Borrower hereby grants to Lender a first priority security interest in the Cash Management Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in favor of Lender a perfected first priority security interest in the Cash Management Account, including, without limitation, executing and filing UCC-1 Financing Statements and continuations thereof. Borrower will not in any way alter or modify the Cash Management Account and will notify Lender of the account number thereof. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account and all costs and expenses for establishing and maintaining the Cash Management Account shall be paid by Borrower.

(b) During a Cash Trap Period, and provided no Event of Default shall have occurred, on each Payment Date (or, if such Payment Date is not a Business Day, on the immediately preceding Business Day), all funds on deposit in the Cash Management Account shall be applied as set forth in the Cash Management Agreement

(c) The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to this Agreement and the other Loan Documents, and such obligations shall be separate and independent, and not conditioned on any event or circumstance whatsoever.

(d) Borrower hereby agrees that Lender may modify the Cash Management Agreement for the purpose of establishing additional sub-accounts in connection with any payments otherwise required under this Agreement and the other Loan Documents and Lender shall provide notice thereof to Borrower.

(e) All funds on deposit in the Cash Management Account following the occurrence of an Event of Default may be applied by Lender in such order and priority as Lender shall determine.

(f) Notwithstanding anything to the contrary herein, all transfers of Borrower's funds from the Cash Management Account or other sources to or for the benefit of any mezzanine lender under any Subordinate Financing pursuant to this Agreement or any of the other Loan Documents shall constitute distributions from Borrower to the Mezzanine Borrower and must comply with the requirements as to distributions of the Delaware Limited Liability Company Act. No provision of any of the Loan Documents shall create a debtor-creditor relationship between Borrower and any mezzanine or subordinate lender.

2.7.3 Payments Received Under the Cash Management Agreement. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, and provided no Event of Default has occurred and is continuing, Borrower's obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited on a monthly basis into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are deposited in the Cash Management Account to satisfy such obligations pursuant to the Cash Management Agreement on the dates each such payment is required, regardless of whether any of such amounts are so applied by Lender.

Section 2.8 **Intentionally Omitted**.

Section 2.9 **Payments Not Conditional**. All payments required to be made by Borrower hereunder or under the Note or the other Loan Documents shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.10 **Initial Advance**. The obligation of Lender to make the initial Advance of the Building Loan (the "**Initial Advance**") shall be subject to the following conditions precedent (collectively, the "**Initial Advance Conditions**") on or prior to the Required Initial Advance Date, all of which conditions precedent must be satisfied prior to Lender making any such Initial Advance:

2.10.1 Prior Conditions Satisfied. All conditions precedent to closing shall continue to be satisfied as of the date of the Initial Advance (in the same manner in which they were satisfied for the closing without reimposing any one-time condition).

2.10.2 Performance; No Default. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Initial Advance, and on the date of such Initial Advance there shall exist no Default or Event of Default.

2.10.3 Representations and Warranties. The representations and warranties made by Borrower or Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of the Initial Advance.

2.10.4 No Damage. The Project Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall be satisfied that sufficient insurance proceeds will be available in the reasonable judgment of Lender to effect the satisfactory restoration of the Project Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.10.5 Government Approvals. Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the demolition of the existing improvements as contemplated by the Plans and Specifications, have been obtained and are in full force and effect.

2.10.6 Final Project Report. The Final Project Report shall have been delivered to Lender by the Construction Consultant.

2.10.7 Development Budget. Borrower shall have prepared and Lender and Construction Consultant shall have approved the Development Budget (including both the Building Loan Budget and the Project Loan Budget) and the Disbursement Schedule.

2.10.8 Plans and Specifications. Two (2) complete sets of the Plans and Specifications and any and all modifications and amendments made thereto which have been reviewed and approved by (A) Lender, and (B) the Construction Consultant. Borrower shall deliver to Lender a list identifying the Plans and Specifications and any and all modifications and amendments made thereto.

2.10.9 General Contractor's Agreement. Borrower and an unaffiliated General Contractor have entered into a Standard Form of Agreement between Owner and Contractor (Where the basis for payment is a STIPULATED SUM), dated as of October 18, 2007, that obligates the General Contractor to cause the Completion of the Improvements to occur prior to the Required Completion Date at a fixed price, reasonably acceptable to Lender and the Construction Consultant in both form and substance (once approved, the "**General Contractor's Agreement**"). The General Contractor's Agreement, shall have been duly executed and delivered by the parties thereto, shall be in full force and effect and Lender shall have received a certified copy or a fully executed duplicate original thereof. The General Contractor shall have duly executed and delivered to Lender a consent to the assignment of the General Contractor's Agreement, in form and substance reasonably satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. If General Contractor consist of more than one Person, then each such Person shall deliver a consent to the assignment of the General Contractor's Agreement, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof.

2.10.10 Architect's and General Contractor's Certificates. Certificates from the Borrower's Architect (the "**Architect's Certificate**") substantially in the form attached hereto as **Exhibit F** and from the General Contractor (the "**General Contractor's Certificate**") substantially in the form attached hereto as **Exhibit G**.

2.10.11 Contracts and Subcontracts. Borrower shall have delivered to Lender, and Lender and Construction Consultant shall have approved a list, certified by Borrower, of all Contractors and Subcontractors who have been or, to the extent identified by Borrower, will be supplying labor or materials for the Property. The list of Contractors and Subcontractors may be amended from time to time subject to the approval of Lender and Construction Consultant, in accordance with the terms hereof. Borrower shall have delivered to Lender all Contract and Major Contracts for all of the work necessary for Completion of the Improvements, and Lender and Construction Consultant shall have approved all such Major Contracts. No Advance shall be made by Lender with regard to work done by or on behalf of any Contractor or Subcontractor unless Borrower shall have delivered to Lender and Construction Consultant originals of the following documents as to such Contractor or Subcontractor, each in form and substance reasonably satisfactory to Lender:

(a) Performance Letters. if requested by Lender, a performance letter ("**Performance Letter**") substantially in the form attached hereto as **Exhibit H** from such Contractors and/or Subcontractors as Lender shall designate.

(b) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.12 Contractors' Consent to Assignment. Each Contractor, Sub-Contractor and Other Design Professionals shall have delivered a consent to the assignment of each of their Contracts, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original of each such Contract.

2.10.13 Cash Management. Lender has determined that the Cash Management Conditions have been satisfied.

2.10.14 Notices. All notices required by any Governmental Authority or by any applicable Legal Requirement to be filed prior to commencement of construction of the Project Improvements shall have been filed.

2.10.15 Deliveries. Lender shall have received:

(a) Draw Request. A Draw Request complying with the requirements hereof;

(b) Affirmation of Payment. An Affirmation of Payment;

(c) Title Insurance Policy. A Title Insurance Policy for the full amount of the Loan, which includes a pending disbursement clause to increase the coverage of the Title Insurance Policy by the amount of the any Construction Advance, insuring the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances;

(d) Lien Waivers. Duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form set forth in Exhibit J from the General Contractor and all Contractors and Subcontractors who have performed work, for the work so performed, and/or who have supplied labor and/or materials, for the labor and/or materials so supplied, except for such work or labor and/or materials for which payment thereof is requested, as to which duly executed lien waivers shall be delivered to Lender with the next request for an Advance;

(e) Ratios. Evidence satisfactory to Lender that following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 75%;

(f) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents;

(g) Anticipated Costs Report. An Anticipated Costs Report; and

(h) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.10.16 Building Loan Agreement Filed. This Building Loan Agreement shall have been filed in the Kings County Clerk's Office.

2.10.17 Initial Project Loan Advance. All conditions to the initial advance of the Project Loan set forth in Section 2.10 of the Project Loan Agreement shall have been satisfied.

2.10.18 Rate Lock Agreement. Simultaneously with the Initial Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Initial Advance bears to the Total Loan Amount.

2.10.19 Initial Reserve Deposits. Borrower shall have deposited the Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit with Lender. The Initial Tax and Insurance Escrow Deposit and the Initial Interest Reserve Deposit shall be funded on the date of the Initial Advance with a portion of the Initial Advance under the Project Loan.

2.10.20 Satisfaction of Initial Advance Conditions. Borrower acknowledge that certain Initial Advance Conditions, including, without limitation, [SUBJECT TO REVIEW BY LENDER] [(i) delivery to and approval by Lender of final Plans and Specifications, (ii) delivery to and approval by Lender of the final Development Budget, Building Loan Budget, and Project Loan Budget, (iii) delivery to Lender of all permits required for the demolition of the existing improvements on the Property, (iv) delivery to Lender of evidence that Borrower maintains the Policies required under this Agreement, and (v) delivery to Lender of Borrower's Requisition and all required accompanying documents with respect to the Initial Advance in accordance with Section 2.14.1 of this Agreement (the "**Unsatisfied Initial Advance Conditions**")]. Borrower covenants and agrees that, prior to the Required Initial Advance Date, time being of the essence, it shall cause all of the Initial Advance Conditions, including, without limitation, the Unsatisfied

Initial Advance Conditions, to be satisfied. Borrower shall not perform any work at the Property, including, without limitation, any demolition of the existing improvements, until all of the Initial Advance Conditions including, without limitation, the Unsatisfied Initial Advance Conditions, have been satisfied. Borrower's failure to satisfy, or cause the satisfaction of, any of the Initial Advance Conditions on or prior to the Required Initial Advance Date shall, at Lender's election, constitute an Event of Default. In addition to any and all other remedies that may be available to Lender hereunder, under the other Loan Documents, at law or in equity, upon the occurrence of an Event of Default resulting from the failure of any Initial Advance Condition to have been satisfied, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, with full power of substitution to complete or undertake such steps as may be necessary, in Lender's sole determination, to satisfy the Initial Advance Condition in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iii) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Initial Advance Conditions, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the Project; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement and the other Loan Documents. In addition, upon such Event of Default, Lender shall have the right to unwind any interest rate hedge entered into by Lender and apply any deposits or other amounts held by Lender pursuant to the Rate Lock Agreement to costs and expenses incurred by Lender under this Agreement, the Rate Lock Agreement or any of the other Loan Documents.

Section 2.11 **Construction Advances**. The obligation of Lender to make the Advances of the Building Loan after the Initial Advance shall be subject to the following conditions precedent (collectively, the "**Construction Advance Conditions**"), all of which conditions precedent must be satisfied prior to Lender making any such Advance:

2.11.1 **Prior Conditions Satisfied**. All conditions precedent to any prior Advance (in the same manner in which they were satisfied for the Initial Advance or prior Advance, as applicable, and without reimposing any one-time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

2.11.2 **Performance; No Default**. Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it at or prior to the date of such Advance, and on the date of such Advance there shall exist no Default or Event of Default or Shortfall.

2.11.3 **Representations and Warranties**. The representations and warranties made by Borrower and Guarantor in the Loan Documents or otherwise made by or on behalf of Borrower or Guarantor in connection therewith after the date thereof shall have been true and correct in all material respects on the date on which made and shall also be true and correct in all material respects on the date of such Advance.

2.11.4 No Damage. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, unless Lender shall have received insurance proceeds sufficient in the reasonable judgment of Lender to effect the satisfactory restoration of the Improvements and to permit the Completion of the Improvements prior to the Required Completion Date.

2.11.5 Deliveries. The following items or documents shall have been delivered to Lender:

(a) Anticipated Costs Report. An anticipated cost report (“**Anticipated Costs Report**”) in the form set forth in **Exhibit I** executed by the General Contractor which sets forth the anticipated costs to complete construction of the Project Improvements, after giving effect to costs incurred during the previous month and any anticipated change orders;

(b) Endorsement to Title Insurance Policy. A “datedown” endorsement to Lender’s title insurance policy as described in the form set forth in **Exhibit C** hereto, which continuation or endorsement shall increase the coverage of the Title Insurance Policy by the amount of the Advance through the pending disbursement clause (but not the overall policy amount which shall be for the full amount of the Loan), amend the effective date of the Title Insurance Policy to the date of such Advance, continue to insure the lien of the Mortgage subject to no liens or encumbrances other than the Permitted Encumbrances and which shall state that since the last disbursement of the Loan there have been no changes in the state of title to the Property (other than Permitted Encumbrances) and that there are no additional survey exceptions not previously approved by Lender;

(c) Evidence of Sufficiency of Funds. Evidence satisfactory to Lender that the proceeds of the Loan plus the Required Equity Funds will be sufficient to cover all Project-Related Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower to Lender and under this Agreement and the other Loan Documents.

(d) Draw Request. A Draw Request complying with the provisions of this Agreement which shall constitute Borrower’s representation and warranty to Lender that: (a) any completed construction is substantially in accordance with the Plans and Specifications, (b) all costs for the payment of which Lender have previously advanced funds have in fact been paid, (c) all the representations and warranties contained in **Article IV** of this Agreement continue to be true and correct in all material respects, (d) no Event of Default shall have occurred and be continuing hereunder, and (e) Borrower continues to be in compliance in all respects with all of the other terms, covenants and conditions contained in this Agreement.

(e) Affirmation of Payment. General Contractor’s Affirmation of Payment (“**Affirmation of Payment**”) (AIA Form G706) in the form attached hereto as **Exhibit E**.

(f) Other Documents. Such other documents and certificates as Lender or its counsel may reasonably require.

2.11.6 Construction Consultant Certificate. Each draw request relating to Hard Costs shall be accompanied by a certificate or report of the Construction Consultant to Lender based upon a site observation of the Property made by the Construction Consultant not more than

thirty (30) days prior to the date of such draw, in which the Construction Consultant shall in substance: (i) verify that the portion of the Project Improvements completed as of the date of such site observation has been completed substantially in accordance with the Plans and Specifications; and (ii) state its estimate of (1) the percentages of the construction of the Project Improvements completed as of the date of such site observation on the basis of work in place as part of the Project Improvements and the Building Loan Budget, (2) the Hard Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (3) the sum necessary to complete construction of the Project Improvements in accordance with the Plans and Specifications, and (4) the amount of time from the date of such inspection that will be required to achieve Completion of the Improvements.

2.11.7 Other Bids. If in the reasonable judgment of Lender and the Construction Consultant all Contracts, Major Contracts, and the General Contractor's Agreement do not cover all of the work necessary for Completion of the Improvements, Borrower shall cause to be furnished firm bids from responsible parties, or estimates and other information reasonably satisfactory to Lender, for the work not so covered, to enable Lender to ascertain the total estimated cost of all work done and to be done.

2.11.8 Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

2.11.9 Lien Waivers. Borrower shall have delivered duly executed lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as applicable, and otherwise substantially in the form set forth in **Exhibit J**, from the General Contractor, all Major Contractors and Major Subcontractors for all work performed, and all labor or material supplied for which payment thereof has been made prior to the date of the Advance.

2.11.10 Construction Consultant Approval. Lender has received advice from the Construction Consultant, satisfactory to Lender, as to Construction Consultant's determination, acting reasonably, based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower's Requisition of the value of the labor and materials in place, that the construction of the Project Improvements is proceeding satisfactorily and according to schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Construction Consultant's satisfaction and substantially in accordance with the Plans and Specifications.

2.11.11 Ratios. Following such Advance (and any Project Loan Advance being made on such date), the Loan-to-Cost Ratio shall be no greater than 75%.

2.11.12 Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.

2.11.13 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of each Advance, Borrower has invested Cash equity in an amount equal to or greater than (a) \$5,356,660.00 or (b) 25% of the Total Project Costs or (c) the difference between the Development Budget and the maximum Loan amount of \$16,150,000.00 for approved Project-Related Costs (the “**Required Equity Funds**”). Notwithstanding the foregoing, if the Borrower realizes cost savings from the development of the Project, either in the form of Hard Costs or Soft Costs, Advances may be advanced to Borrower provided that (i) the Borrower would not have less than \$5,356,660.00 of cash equity in the Project through such Advance, (ii) the Debt Service Coverage Ratio shall be equal to or greater than 1.70 to 1.0 assuming a fully advanced Loan using a debt service constant of 7.50%, (iii) the Debt Service Coverage Ratio shall be equal to or greater than 1.20 to 1.0 assuming a fully advanced Loan using a debt service constant of 10.65%, and (iv) the loan-to-value ratio for the Property is no greater than 75% assuming a fully advanced Loan. If Borrower is in non-compliance solely with respect to condition (i) above, at Borrower’s option, either (A) any excess cost savings (funds in excess of the amount so that the Required Equity Funds shall continue to be satisfied) shall be deposited as follows: (1) 100% into the Replacement Reserve Account, or (2) at Lender’s discretion, into any other Reserves required by Lender pursuant to this Agreement, or (B) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement. If Borrower is in compliance with respect to condition (i) above but is not in compliance with conditions (ii), (iii) and (iv) above, any excess cost savings shall, at Borrower’s option, (A) be held back by Lender as additional collateral for the Loan until satisfaction of each of the requirements are satisfied, or (B) be deposited as follows: (1) 100% into the Replacement Reserve Account, or (2) at Lender’s discretion, into any other Reserves required by Lender pursuant to this Agreement, or (C) Borrower shall release Lender from its obligation to fund the remaining amounts of the Loan and Borrower and any guarantor under the Rate Lock Agreement pays for the breakage costs, if any, on the unfunded portion of the Loan payable pursuant to the Rate Lock Agreement.

2.11.14 Rate Lock Agreement. Simultaneously with each Construction Advance, Lender shall return to Borrower, a pro-rata portion of the deposit held by Lender pursuant to the Rate Lock Agreement in such proportion as the amount of the Construction Advance bears to the Total Loan Amount, provided, however, that in the event that any of the conditions of Section 2.11.13 are not satisfied, Lender shall have the right to apply the portion of the deposit under the Rate Lock Agreement to be returned to Borrower to satisfy the conditions of Section 2.11.13.

2.11.15 Government Approvals. Lender shall not be required to make Construction Advances for any phase of the construction of the Project Improvements unless and until Borrower shall have delivered to Lender evidence satisfactory to Lender that all Governmental Approvals necessary for the construction of the phase of the Project Improvements to be constructed by Borrower as contemplated by the Plans and Specifications have been obtained and are in full force and effect, including, without limitation, the final approval of the Plans and Specifications by the City of New York for the Project Improvements and a building permit(s) covering the entire scope of work contemplated by the Project Improvements in accordance with the approved Plans and Specification “lawfully issued” to

Borrower within the meaning of Section 11-31(a) of the Zoning Resolution of the City of New York (the “**Zoning Resolution**”).

Section 2.12 **Final Advance**.

2.12.1 *Conditions to Release of Final Advance*. In addition to the conditions set forth in **Section 2.10** and **Section 2.11**, above, Lender’s obligation to make the final Advance in the amount calculated pursuant to **Section 2.12.2** of this Agreement (the “**Final Advance**”) shall be subject to receipt by Lender of the following:

- (a) Completion of Improvements. Evidence satisfactory to Lender and the Construction Consultant that the Completion of the Improvements has occurred.
- (b) Final Project Loan Advance. All conditions to the Final Project Loan Advance have been satisfied and the Final Project Loan Advance shall have been made or will be made simultaneously therewith.
- (c) Lien Waivers. Duly executed final lien waivers, which shall be conditional lien waivers or unconditional lien waivers, as determined by Lender in its sole discretion, and otherwise substantially in the form attached hereto as **Exhibit J** from the General Contractor and Major Contractors and Major Subcontractors who have performed work for the work so performed, and/or who have supplied labor and/or materials for the labor and/or materials so supplied.
- (d) “As-Built” Plans and Specifications. A full and complete set of “as built” Plans and Specifications certified to by Borrower’s Architect.
- (e) Administration Fee. Borrower shall have paid the Administration Fee in accordance with the provisions of the Administration Fee Agreement.
- (f) Certificates. Completed AIA Form G704 (Certificate of Substantial Completion) and completed AIA Form G707 (Consent of Surety to Final Payments) shall have been executed and delivered by Borrower’s Architect and General Contractor.
- (g) Deposits to Reserves. If Lender determines that any Punch List Work or Deferred Maintenance Condition exists, the Punch List and Deferred Maintenance Deposit has been made, if Lender determines that the deposits are required to the Operating Reserve Account, the Operating Reserve Deposit has been made, and all other deposits to the Reserve Funds required by this Agreement have been made.
- (h) Other Documents. Such documents, letters, affidavits, reports and assurances, as Lender, Lender’s counsel and the Construction Consultant may reasonably require.
- (i) Required Ratios at Completion. Lender shall have determined that, following the Final Advance (and taking into consideration the Final Project Loan Advance under the Project Loan): (i) the Loan-to-Cost Ratio shall be no more than 75%; (ii) the Stabilized Loan-to-Value Ratio shall be no more than 75%; (iii) the Stabilized Net Cash Flow for the entire

Property shall be not less than \$2,064,000; (iv) the Debt Service Coverage Ratio based on Lender's underwritten Net Operating Income and the greater of the actual debt service constant or 10.65% shall be 1.20 to 1.0 or greater; and (v) the Debt Service Coverage Ratio based on the Stabilized Net Cash Flow and the greater of the actual debt service constant or 7.50.% shall be 1.70 to 1.0 or greater (the "**Required Ratios at Completion**"), or Borrower shall have deposited with Lender Cash or a Letter of Credit to satisfy the Required Ratios at Completion in accordance with Section 2.12.2.

(j) Tenant Estoppel Certificates. Borrower shall have delivered to Lender estoppel certificates from all of the tenants at the Property in form and substance satisfactory to Lender.

(k) Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that, as of the date of the Final Advance, Borrower has invested Cash equity in an amount equal to or greater than the Required Equity Funds or has otherwise complied with the provisions of Section 2.11.13 with respect thereto.

(l) Insolvency Opinion. The issuance of and delivery to Lender of six (6) original counterparty Insolvency Opinions in the form attached hereto as Exhibit K from Wachtel & Masyr, LLP or another law firm reasonably acceptable to Lender.

(m) ICIP Eligibility. Evidence satisfactory to Lender that Borrower has obtained a Certificate of Eligibility under the Industrial and Commercial Incentive Program.

2.12.2 Amount of Final Advance. Except as expressly provided for below, the amount of the Final Advance shall be equal to the sum of: (a) any Retainage not previously released and advanced to Borrower; plus (b) the amount of any Punch List and Deferred Maintenance Reserve Deposit; plus (c) the positive difference, if any, between, (i) the Building Loan Amount and (ii) all amounts previously Advanced under the Building Loan (including the amounts described in clauses (a) and (b) of the sentence). The portion of the Final Advance described in clause (c) of the foregoing sentence is referred to herein as the "**Building Loan Earn Out Advance**" and the corresponding portion of the Final Project Loan Advance is referred to herein as the "**Project Loan Earn Out Advance**" and together with the Building Loan Earn Out Advance, the "**Earn Out Advances**". Notwithstanding anything to the contrary provided for herein, the Earn Out Advances shall be reduced, pro rata, but not below \$0.00, if and to the extent necessary for the Required Ratios at Completion to be achieved following the Final Advances. In addition, if the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00, Lender shall have the right, but not the obligation, to apply any deposits held by Lender pursuant to the Rate Lock Agreement and any Interest Reserve Funds to the payment of the Building Loan and the Project Loan in such order and priority as Lender shall determine in its sole discretion. If the Required Ratios at Completion cannot be achieved even if the Earn Out Advances are reduced to \$0.00 and the deposits, if any under the Rate Lock Agreement and the Interest Reserve Funds are applied to the payment of the Loan, Borrower shall deposit with Lender Cash or a Letter of Credit satisfactory to Lender in an amount equal to the amount which, if used to pay down the Loan, would result in Stabilized Loan-to-Value Ratio of 75%, and a Debt Service Coverage Ratio of 1.70 to 1.0, calculated based upon Lender's determination on a pro-forma basis of Lender's Stabilized Net Cash Flow for the

12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 7.50% and a Debt Service Coverage Ratio of 1.20 to 1.0, calculated based upon Lender's determination on a pro-forma basis of Lender's underwritten Net Operating Income for the 12 months immediately following and assuming a thirty (30) year amortization schedule based upon a debt service constant equal to the greater of the actual debt service constant and 10.65%.

2.12.3 Rate Lock Agreement. Upon satisfaction of all of the conditions to the Final Advance set forth in **Section 2.12.1**, and subject to the provisions of **Section 2.12.2**, Lender shall return to Borrower, the remaining deposits, if any, held by Lender under the Rate Lock Agreement and not applied by Lender in accordance with the provisions of the Rate Lock Agreement and any Interest Reserve Funds held by Lender pursuant to this Agreement.

Section 2.13 **No Reliance**. All conditions and requirements of this Agreement are for the sole benefit of Lender and no other person or party (including, without limitation, the Construction Consultant, the General Contractor and subcontractors (including, without limitation, Major Contractors and Major Subcontractors) and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower. Lender shall have the right, in its sole and absolute discretion, to waive any such condition or requirement.

Section 2.14 **Method of Disbursement of Loan Proceeds**.

2.14.1 Draw Request to Be Submitted to Lender. At such time as Borrower shall desire to obtain an Advance, Borrower shall complete, execute and deliver to Lender a Borrower's Requisition in the form attached hereto as **Exhibit L** ("**Borrower's Requisition**").

(a) Borrower's Requisition shall be accompanied by a completed and itemized Application and Certificate for Payment (AIA Document No. G702) attached hereto as **Exhibit M** or similar form approved by Lender, containing the certification of the General Contractor or contractor or subcontractor to whom such payment is made, as applicable, and Borrower's Architect as to the accuracy of same, together with invoices relating to all items of Hard Costs covered thereby and accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the Improvements to the date of the requisition. The cost breakdown shall also show the percentage of completion of each line item on the Building Loan Budget, and the accuracy of the cost breakdown shall be certified by Borrower and by Borrower's Architect. All such applications for payment shall also show all contractors and subcontractors, including Major Contractors and Major Subcontractors, by name and trade, the total amount of each contract or subcontract, the amount theretofore paid to each subcontractor as of the date of such application, and the amount to be paid from the proceeds of the Advance to each contractor and subcontractor;

(b) the completed construction will be reviewed by the Construction Consultant who will certify to Lender as to the value of completed construction, percentage of completion and compliance with Plans and Specifications;

(c) lien waivers from each other Major Contractor and Major Subcontractors for work done and materials supplied by them which were paid for pursuant to any prior Draw Request;

(d) a written request of Borrower for any necessary changes in the Plans and Specifications, the Building Loan Budget, the Disbursement Schedule or the Construction Schedule;

(e) copies of all executed change orders, contracts and subcontracts, and, to the extent requested by Lender, of all inspection or test reports and other documents relating to the construction of the Project Improvements not previously delivered to Lender; and

(f) such other information, documentation and certification as Lender shall reasonably request.

2.14.2 *Procedure of Advances.*

(a) Each Draw Request shall be submitted to Lender and Construction Consultant at least ten (10) Business Days prior to the date of the requested Advance (the “**Requested Advance Date**”), and no more frequently than monthly. Lender shall make the requested Advance on the Requested Advance Date so long as all conditions to such Advance are satisfied or waived.

(b) Not later than 11:00 A.M. New York City time, on the Requested Advance Date, Lender shall make such Advance available to Borrower in accordance with the terms of this **Section 2.14.**

(c) Each Advance (other than the Final Advance) shall be in an amount of not less than \$250,000.00.

(d) Each Advance shall be made on a Payment Date.

2.14.3 *Funds Advanced.* Each Advance shall be made by Lender by wire transfer to such checking account of Borrower as specified to Lender in writing or as provided in **Section 2.14.4** below. All proceeds of all Advances shall be used by Borrower only for the purposes for which such Advances were made. Borrower shall not commingle such funds with other funds of Borrower.

2.14.4 *Direct Advances to Third Parties.* Lender may make, at Lender’s option, any or all Advances directly or through the Title Company to (i) any Contractor, as applicable, for construction expenses which shall theretofore have been approved by Lender and for which Borrower shall have failed to make payment after receipt by Borrower of such applicable Advance, (ii) Borrower’s Architect to pay its fees to the extent funds are allocated thereto in the Building Loan Budget if Borrower shall have failed to do so, (iii) the Construction Consultant to pay its fees, (iv) Lender’s counsel to pay its fees, (v) to pay (x) any installment of interest due under the Note, (y) any expenses incurred by Lender which are reimbursable by Borrower under the Loan Documents (including, without limiting the generality of the foregoing, reasonable attorneys’ fees and expenses and other fees and expenses incurred by Lender), provided that

Borrower shall theretofore have received notice from Lender that such expenses have been incurred and Borrower shall have failed to reimburse Lender for said expenses beyond any grace periods provided for said reimbursement under the Note, this Agreement or any of the other Loan Documents, or (z) following the occurrence and continuation of an Event of Default, any other sums due to Lender under the Note, this Agreement or any of the other Loan Documents, all to the extent that the same are not paid by the respective due dates thereof, and (vi) any other Person to whom Lender in good faith determines payment is due and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. The execution of this Agreement by Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan directly to any such Person or through the Title Company to such Persons in accordance with this **Section 2.14.4** as amounts become due and payable to them hereunder and any portion of the Loan so disbursed by Lender shall be deemed disbursed as of the date on which the Person to whom payment is made receives the same. No further authorization from Borrower shall be necessary to warrant such direct Advances to such relevant Person, and all such Advances shall satisfy *pro tanto* the obligations of Lender hereunder and shall be secured by the Mortgage and the other Loan Documents as fully as if made directly to Borrower.

2.14.5 ***One Advance Per Month.*** Lender shall have no obligation to make Advances of the Loan more often than once in each calendar month except that Lender, in its sole discretion, shall have the right but not the obligation, to make additional advances per month for interest, fees and expenses due under the Loan Documents.

2.14.6 ***Advances Do Not Constitute a Waiver.*** No Advance shall constitute a waiver of any of the conditions of Lender's obligation to make further Advances nor, in the event Borrower is unable to satisfy any such condition, shall any Advance have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

2.14.7 ***Trust Fund Provisions.*** All proceeds advanced hereunder shall be subject to the trust fund provisions of **Section 13** of the Lien Law. The affidavit attached hereto as **Exhibit D** is made pursuant to and in compliance with **Section 22** of the Lien Law, and, if so indicated in said affidavit, Building Loan proceeds will be used, in part, for reimbursement for payments made by the Borrower prior to the Initial Advance hereunder but subsequent to the commencement of the construction and equipping of the Improvements for items constituting Costs of the Improvement.

2.14.8 ***Advances and Disbursements Under Completion Guaranty.*** Notwithstanding anything to the contrary contained in this Agreement or in any other Loan Document, Borrower hereby irrevocably and unconditionally authorizes Lender to make any disbursements of proceeds of the Loan or of any Reserve Funds held by Lender to Guarantor in accordance with the Guaranty of Completion.

Section 2.15 Plan Review Process.

(a) Borrower hereby acknowledges and agrees that neither Lender nor the Construction Consultant's approval of any Plans and Specifications (or any revisions thereto), nor its inspection of the performance of the construction, nor its right to inspect such work, shall

impose upon Lender and/or Construction Consultant any obligation or liability whatsoever with respect thereto, including, without limitation, any obligation or liability that might arise as a result of such work not being performed in accordance with applicable laws and/or requirements of public authorities or with the Plans and Specifications (and revisions thereto) approved by Lender and Construction Consultant or otherwise. The review or approval by Lender and Construction Consultant of any Plans and Specifications or any revisions thereto is solely for Lender's benefit, and is without any representation or warranty whatsoever with respect to the adequacy, correctness or efficiency thereof or otherwise. The granting by Lender and/or Construction Consultant of its approval of any Plans and Specifications or any revisions thereto, shall not in any manner constitute or be deemed to constitute a judgment or acknowledgment by Lender as to their legality or compliance with laws and/or requirements of public authorities.

ARTICLE III.

CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Closing**. The obligation of Lender to make the Loan hereunder is subject to the fulfillment by Borrower or waiver by Lender of the following conditions precedent no later than the Closing Date:

3.1.1 Representations and Warranties; Compliance with Conditions. The representations and warranties of Borrower contained in this Agreement and the other Loan Documents shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of such date, and no Default or an Event of Default shall have occurred and be continuing; and Borrower shall be in compliance in all material respects with all terms and conditions set forth in this Agreement and in each other Loan Document on its part to be observed or performed.

3.1.2 Loan Agreement and Note. Lender shall have received a copy of this Agreement and the Note, in each case, duly executed and delivered on behalf of Borrower.

3.1.3 Delivery of Loan Documents; Title Insurance; Reports; Leases.

(a) Mortgage, Assignment of Leases. Lender shall have received from Borrower fully executed and acknowledged counterparts of the Mortgage and the Assignment of Leases and evidence that counterparts of the Mortgage and Assignment of Leases have been delivered to the Title Company for recording, in the reasonable judgment of Lender, so as to effectively create upon such recording valid and enforceable Liens upon the Property, of the requisite priority, in favor of Lender or Lender's nominee (or such other trustee as may be required or desired under local law), subject only to the Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents. Lender shall have also received from Borrower fully executed counterparts of the other Loan Documents.

(b) Title Insurance. Lender shall have received the Title Insurance Policy issued by a title company acceptable to Lender (the "**Title Company**") and dated as of the Closing Date, with reinsurance and direct access agreements acceptable to Lender. Such Title Insurance Policy shall (i) provide coverage in amounts satisfactory to Lender, (ii) insure Lender

that the Mortgage creates a valid lien on the Property of the requisite priority, free and clear of all exceptions from coverage other than Permitted Encumbrances and standard exceptions and exclusions from coverage (as modified by the terms of any endorsements), (iii) contain such endorsements and affirmative coverages as Lender may reasonably request, and (iv) name Lender as the insured. The Title Insurance Policy shall be assignable. Lender also shall have received evidence that all premiums in respect of such Title Insurance Policy have been paid.

(c) Survey. Lender shall have received a title survey for the Property, certified to the Title Company and Lender and their successors and assigns, in form and content satisfactory to Lender and prepared by a professional and properly licensed land surveyor satisfactory to Lender in accordance with the Accuracy Standards for ALTA/ACSM Land Title Surveys as adopted by American Land Title Association, American Congress on Surveying & Mapping and National Society of Professional Surveyors in 1999 or in such other form as Lender shall approve (the “**Survey**”). The Survey shall reflect the same legal description contained in the Title Insurance Policy referred to in clause (b) above and shall include, among other things, a metes and bounds description of the real property comprising part of the Property reasonably satisfactory to Lender. The surveyor’s seal shall be affixed to the Survey and the surveyor shall provide a certification for the Survey in form and substance acceptable to Lender.

(d) Insurance. Lender shall have received valid certificates of insurance for the policies of insurance required hereunder, satisfactory to Lender in its sole discretion, and evidence of the payment of all premiums payable for the existing policy period.

(e) Environmental Reports. Lender shall have received a Phase I environmental report (and, if recommended by the Phase I environmental report, a Phase II environmental report) in respect of the Property, in each case satisfactory in form and substance to Lender.

(f) Zoning. Evidence reasonably acceptable to Lender confirming that the Project Improvements can be developed and constructed in accordance with the Plans and Specifications “as of right” without requiring the issuance of any zoning variance or other discretionary permit and/or approval and such other matters as Lender may reasonably require.

(g) Encumbrances. Borrower shall have taken or caused to be taken such actions in such a manner so that Lender has a valid and perfected first priority Lien as of the Closing Date with respect to the Mortgage, subject only to applicable Permitted Encumbrances and such other Liens as are permitted pursuant to the Loan Documents, and Lender shall have received satisfactory evidence thereof.

3.1.4 Related Documents. Each additional document not specifically referenced herein, but relating to the transactions contemplated herein, shall be in form and substance reasonably satisfactory to Lender, and shall have been duly authorized, executed and delivered by all parties thereto and Lender shall have received and approved certified copies thereof.

3.1.5 Delivery of Organizational Documents. On or before the Closing Date, Borrower shall deliver or cause to be delivered to Lender copies certified by Borrower of all

organizational documentation related to Borrower and/or the formation, structure, existence, good standing and/or qualification to do business, as Lender may request in its sole discretion, including, without limitation, amendments (as requested by Lender), good standing certificates, qualifications to do business in the appropriate jurisdictions, resolutions authorizing the entering into of the Loan and incumbency certificates as may be requested by Lender.

3.1.6 Opinions of Borrower's Counsel. Lender shall have received opinions from Borrower's counsel with respect to due execution, authority, enforceability of the Loan Documents and such other matters as Lender may reasonably require, including, without limitation, the Insolvency Opinion, all such opinions in form, scope and substance satisfactory to Lender and Lender's counsel in their sole discretion.

3.1.7 Development Budget. Borrower shall have delivered, and Lender and Construction Consultant shall have approved, the Development Budget and the Disbursement Schedule attached thereto, and certified by Borrower as being true, correct and complete.

3.1.8 Carrying Costs. Borrower shall have paid all Carrying Costs relating to the Property then due and payable including without limitation, (a) accrued but unpaid Insurance Premiums due pursuant to the Policies, (b) currently due Taxes (including any in arrears) relating to the Property, and (c) currently due Other Charges relating to the Property, which amounts shall be funded with proceeds of the Loan.

3.1.9 Completion of Proceedings. All organizational and other proceedings taken or to be taken in connection with the transactions contemplated by this Agreement and other Loan Documents and all documents incidental thereto shall be satisfactory in form and substance satisfactory to Lender, and Lender shall have received all such counterpart originals or certified copies of such documents as Lender may reasonably request.

3.1.10 Payments. All payments, deposits or escrows required to be made or established by Borrower under this Agreement, the Note and the other Loan Documents on or before the Closing Date shall have been paid.

3.1.11 Payment of Fees. Payment by Borrower of all fees and expenses required by this Agreement and/or the other Loan Documents, to the extent due and payable, including, without limitation, Lender's reasonable attorneys' fees and expenses, all origination fees, and brokerage commissions.

3.1.12 Transaction Costs. Borrower shall have paid or reimbursed Lender for all title insurance premiums, recording and filing fees, costs of environmental reports, Physical Conditions Report, appraisals and other reports, the fees and costs of Lender's counsel, and all other third party out-of-pocket expenses incurred in connection with the origination and closing of the Loan.

3.1.13 Material Adverse Change. There shall have been no material adverse change in the financial condition or business condition of Borrower, any one or more of the Persons comprising Guarantor that, in the aggregate, constitutes a material adverse change in the financial condition of the Guarantor collectively, or a material adverse change in the Property since the date of the most recent financial statements delivered to Lender. The income and

expenses of the Property, the occupancy thereof, and all other features of the transaction shall be as represented to Lender without material adverse change. Neither Borrower, Guarantor nor any of their respective constituent Persons shall be the subject of any bankruptcy, reorganization, or insolvency proceeding.

3.1.14 Required Equity Funds. Borrower shall furnish Lender with evidence in form and content satisfactory to Lender that Borrower has contributed the Required Equity Funds for approved Project-Related Costs.

3.1.15 Ratios. Following the Initial Advance, the Loan-to-Cost Ratio shall be no greater than 75%.

3.1.16 Intentionally Omitted

3.1.17 Physical Conditions Report. Lender shall have received a Physical Conditions Report with respect to the Property, which report shall be issued by an engineer selected by Lender and shall be reasonably satisfactory in form and substance to Lender.

3.1.18 The Architect's Contract. The Architect's Contract in form and substance satisfactory to Lender, shall have been duly executed and delivered by the parties thereto, shall be in full force and effect and Lender shall have received a certified copy or a fully executed duplicate original thereof. Borrower's Architect shall have duly executed and delivered to Lender a consent to the assignment of the Architect's Contract, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. If Borrower's Architect consists of more than one Person, then each such Person shall deliver a consent to the assignment of the Architect's Contract in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original thereof. All Other Design Professionals shall deliver a consent to the assignment to each of their Contracts, in form and substance satisfactory to Lender, and Lender shall have received a certified copy or a fully executed duplicate original of each such Contract.

3.1.19 Appraisal. Lender shall have received an appraisal of the Property, from an appraiser selected by Lender, which appraisal shall be satisfactory in form and substance to Lender.

3.1.20 Deliveries. The following items or documents shall have been delivered to Lender:

(a) Plans and Specifications. Two (2) complete sets of the Plans and Specifications and any and all modifications and amendments made thereto which have been reviewed and approved by Lender and the Construction Consultant. Borrower shall deliver to Lender a list identifying the Plans and Specifications and any and all modifications and amendments made thereto.

(b) Insurance. All Policies of insurance (or certificates thereof) required by **Section 6.1** of this Agreement or any other Loan Document.

(c) Final Project Report. The Final Project Report shall have been delivered to Lender by the Construction Consultant.

(d) Certification Regarding Chattels. Lender shall have received a certification from the Title Company or other service satisfactory to Lender or counsel satisfactory to Lender (which shall be updated from time to time at Borrower's expense upon request by Lender in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date including no judgment or tax liens affecting Borrower or Guarantor, the Property or the Personal Property, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Lender) or title retention agreements which affect the Property.

(e) Construction Schedule. The Construction Schedule, certified by Borrower as being true, correct and complete, which shall have been approved by Lender and the Construction Consultant.

(f) Evidence of Vacancy. Evidence that the Property and Existing Improvements are free of tenants, occupants and any claims of tenancy or a right of occupancy.

(g) ICIP Eligibility. Evidence satisfactory to Lender that Borrower has applied for a Certificate of Eligibility under the Industrial and Commercial Incentive Program.

3.1.21 Management Agreement. Lender shall have received a certified copy of each Management Agreement with respect to the Property which shall be satisfactory in form and substance to Lender.

3.1.22 Subordination. Lender shall have received the Subordination of Affiliate Fee executed by Borrower, Guarantor, each member of Borrower or any other Affiliate of Borrower entitled to an Affiliate Fee.

3.1.23 Conditional Use Permit. Borrower shall have delivered to Lender evidence satisfactory to Lender that Borrower has obtained an extension or renewal of the conditional use permit for the Property permitting the Property to be used for a self-storage facility.

3.1.24 Further Documents. Lender or its counsel shall have received such other documents and further approvals, opinions, documents and information as Lender or its counsel may have reasonably requested including the Loan Documents in form and substance satisfactory to Lender and its counsel.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES

Section 4.1 Borrower Representations. Borrower represents and warrants as of the date hereof and as of the Closing Date that:

4.1.1 Organization. Borrower has been duly organized and is validly existing and in good standing with requisite power and authority to own its properties and to transact the businesses in which it is now engaged. Borrower is duly qualified to do business and is in good standing in each jurisdiction where it is required to be so qualified in connection with its properties, businesses and operations. Borrower possesses all rights, licenses, permits and authorizations, governmental or otherwise, necessary to entitle it to own its properties and to transact the businesses in which it is now engaged, and the sole business of Borrower is the ownership, management and operation of the Property. The ownership interests in Borrower are as set forth on the organizational chart attached hereto as **Schedule I**.

4.1.2 Proceedings. Borrower has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Loan Documents. This Agreement and such other Loan Documents have been duly executed and delivered by or on behalf of Borrower and constitute legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.1.3 No Conflicts. The execution, delivery and performance of this Agreement and the other Loan Documents by Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of Borrower pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement, partnership agreement, management agreement or other agreement or instrument to which Borrower is a party or by which any of Borrower's property or assets is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any Governmental Authority having jurisdiction over Borrower or any of Borrower's properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such Governmental Authority required for the execution, delivery and performance by Borrower of this Agreement or any other Loan Documents has been obtained and is in full force and effect.

4.1.4 Litigation. There are no actions, suits or proceedings at law or in equity by or before any Governmental Authority or other agency now pending, or threatened against or affecting Borrower, Guarantor or the Property, which actions, suits or proceedings, if determined against Borrower, Guarantor or the Property, might materially adversely affect the condition (financial or otherwise) or business of Borrower, Guarantor or the condition or ownership of the Property.

4.1.5 Agreements. Borrower is not a party to any agreement or instrument or subject to any restriction which might materially and adversely affect Borrower or the Property, or Borrower's business, properties or assets, operations or condition, financial or otherwise. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other

agreement or instrument to which Borrower is a party or by which Borrower or the Property is otherwise bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted pursuant to clause (xx) of the definition of “Special Purpose Entity” set forth in **Section 1.1** hereof and (b) obligations under the Loan Documents.

4.1.6 Title. Borrower has good, marketable and insurable fee simple title to the real property comprising part of the Property and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property (as currently used) or Borrower’s ability to repay the Loan. The Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents.

4.1.7 Solvency. Borrower has (a) not entered into this transaction or executed the Note, this Agreement or any other Loan Documents with the actual intent to hinder, delay or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under such Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower’s assets exceeds and will, immediately following the making of the Loan, exceed Borrower’s total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower’s assets is and will, immediately following the making of the Loan, be greater than Borrower’s probable liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower). No petition in bankruptcy has been filed against Borrower or any Guarantor in the last seven (7) years, and neither Borrower nor any Guarantor in the last seven (7) years has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for the benefit of debtors. Neither Borrower nor any Guarantor is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Borrower’s assets or property, and Borrower has no knowledge of any Person contemplating the filing of any such petition against it or such constituent Persons.

4.1.8 Full and Accurate Disclosure. No statement of fact made by Borrower in this Agreement or in any of the other Loan Documents contains any untrue statement of a

material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no material fact presently known to Borrower which has not been disclosed to Lender which adversely affects, nor as far as Borrower can foresee, might adversely affect, the Property or the business, operations or condition (financial or otherwise) of Borrower.

4.1.9 No Plan Assets. Borrower does not sponsor, is not obligated to contribute to, and is not itself an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, and none of the assets of Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101. In addition, (a) Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA and (b) transactions by or with Borrower are not subject to any state or other statute, regulation or other restriction regulating investments of, or fiduciary obligations with respect to, governmental plans within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by this Agreement, including but not limited to the exercise by Lender of any of its rights under the Loan Documents.

4.1.10 Compliance. Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including, without limitation, building and zoning ordinances and codes. To the best of Borrower’s knowledge, Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any other Governmental Authority the right of forfeiture as against the Property or any part thereof or any monies paid in performance of Borrower’s obligations under any of the Loan Documents.

4.1.11 Financial Information. All financial data, including, without limitation, the statements of cash flow and income and operating expense, that have been delivered to Lender in connection with the Loan (i) are true, complete and correct in all material respects, (ii) accurately represent the financial condition of Borrower and the Property, as applicable, as of the date of such reports, and (iii) to the extent prepared or audited by an independent certified public accounting firm, have been prepared in accordance with GAAP throughout the periods covered, except as disclosed therein. Except for Permitted Encumbrances, Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Borrower and reasonably likely to have a materially adverse effect on the Property or the operation thereof as a self-storage facility, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of Borrower from that set forth in said financial statements.

4.1.12 Condemnation. No Condemnation or other proceeding has been commenced or, to Borrower’s best knowledge, is threatened or contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

4.1.13 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

4.1.14 Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over other property) or in recorded easements serving the Property and such easements are set forth in and insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all Governmental Authorities.

4.1.15 Not a Foreign Person. Borrower is not a “foreign person” within the meaning of §1445(f)(3) of the Code.

4.1.16 Separate Lots. The Property is comprised of one (1) or more parcels which constitute a separate tax lot or lots and does not constitute a portion of any other tax lot not a part of the Property.

4.1.17 Assessments. There are no pending or proposed special or other assessments for public improvements or otherwise affecting the Property, nor are there any contemplated improvements to the Property that may result in such special or other assessments.

4.1.18 Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject to principles of equity and bankruptcy, insolvency and other laws generally affecting creditors’ rights and the enforcement of debtors’ obligations), and neither Borrower nor Guarantor have asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

4.1.19 No Prior Assignment. There are no prior assignments of the Leases or any portion of the Rents due and payable or to become due and payable which are presently outstanding.

4.1.20 Insurance. Borrower has obtained and has delivered to Lender certified copies of the Policies reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. No claims have been made or are currently pending, outstanding or otherwise remain unsatisfied under any such Policy, and neither Borrower nor any other Person, has done, by act or omission, anything which would impair the coverage of any such Policy.

4.1.21 Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that,

with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

4.1.22 ICIP Eligibility. Borrower has obtained a Certificate of Eligibility under the Industrial and Commercial Incentive Programs and Borrower shall comply with all of the requirements of the Industrial and Commercial Incentive Program in order to maintain such eligibility.

4.1.23 Flood Zone. None of the Improvements on the Property is located in an area as identified by the Federal Emergency Management Agency as an area having special flood hazards and, if so located, the flood insurance required pursuant to Section 6.1.1(a)(A) is in full force and effect with respect to the Property.

4.1.24 Required Equity Funds. Borrower represents and warrants to Lender that Borrower has contributed the Required Equity Funds for approved Project-Related Costs.

4.1.25 Boundaries. All of the improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Property encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by the Title Insurance Policy.

4.1.26 Leases. The Property is not subject to any leases other than the Leases described in the rent roll attached hereto as Schedule V and made a part hereof. Borrower is the owner and lessor of landlord's interest in the Leases. No Person has any possessory interest in the Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and, to the best of Borrower's knowledge, (a) there are no defaults thereunder by either party and (b) there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder. No Rent (including security deposits) has been paid more than one (1) month in advance of its due date. To the best of Borrower's knowledge, all work to be completed by Borrower prior to the date hereof under each Lease has been performed as required and has been accepted by the applicable tenant, and any payments, free rent, partial rent, rebate of rent or other payments, credits, allowances or abatements required to be given by Borrower to any tenant has already been received by such tenant. There has been no prior sale, transfer or assignment, hypothecation or pledge of any Lease or of the Rents received therein. To the best of Borrower's knowledge, no tenant listed on Schedule I has assigned its Lease or sublet all or any portion of the premises demised thereby, no such tenant holds its leased premises under assignment or sublease, nor does anyone except such tenant and its employees occupy such leased premises. No Tenant under any Lease has a right or option pursuant to such Lease or otherwise to purchase all or any part of the leased premises or the building of which the leased premises are a part. No Tenant has no right or option for additional space in the Improvements. Except as otherwise disclosed by the Environmental Report (as defined in the Mortgage), no hazardous wastes or toxic substances, as defined by applicable federal, state or local statutes, rules and regulations, have been disposed, stored or treated by any tenant under any Lease on or about the Property nor does Borrower have any knowledge of any Tenant's intention to use its premises for any activity which, directly or

indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum product or any toxic or hazardous chemical, material, substance or waste. True, correct and complete copies of the Leases have been provided to Lender and such Leases have not been modified or amended in any way.

4.1.27 *Survey*. The Survey for the Property delivered to Lender in connection with this Agreement has been prepared in accordance with the provisions of **Section 3.1.3(c)** hereof, and does not fail to reflect any material matter affecting the Property or the title thereto.

4.1.28 *Inventory*. Borrower is the owner of all of the Equipment, Fixtures and Personal Property (as such terms are defined in the Mortgage) located on or at the Property and shall not lease any Equipment, Fixtures or Personal Property other than as permitted hereunder. All of the Equipment, Fixtures and Personal Property are sufficient to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

4.1.29 *Filing and Recording Taxes*. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the transfer of the Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under applicable Legal Requirements currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid, and, under current Legal Requirements, the Mortgage is enforceable in accordance with its terms by Lender (or any subsequent holder thereof), subject to principles of equity and bankruptcy, insolvency and other laws generally applicable to creditors' rights and the enforcement of debtors' obligations.

4.1.30 *Special Purpose Entity/Separateness*.

(a) Until the Total Debt has been paid in full, Borrower hereby represents, warrants and covenants, that Borrower is, shall be and shall continue to be a Special Purpose Entity.

(b) The representations, warranties and covenants set forth in **Section 4.1.30(a)** shall survive for so long as any amount remains payable to Lender under this Agreement or any other Loan Document.

(c) All of the facts stated and all of the assumptions made in the Insolvency Opinion, including, but not limited to, in any exhibits attached thereto, are true and correct in all respects and all facts stated and all assumptions made in any subsequent non-consolidation opinion required to be delivered in connection with the Loan Documents (an "**Additional Insolvency Opinion**"), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects. Borrower has complied and will comply with, all of the assumptions made with respect to Borrower in the Insolvency Opinion. Borrower will have complied and will comply with all of the assumptions made with respect to Borrower in any Additional Insolvency Opinion. Each entity other than Borrower with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will

comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

4.1.31 Property Management Agreement. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms.

4.1.32 Illegal Activity. No portion of the Property has been or will be purchased with proceeds of any illegal activity.

4.1.33 No Change in Facts or Circumstances; Disclosure. All information submitted by and on behalf of Borrower to Lender and in all financial statements, rent rolls (including the Rent Roll attached hereto as Schedule V), reports, certificates and other documents submitted in connection with the Loan or in satisfaction of the terms thereof and all statements of fact made by Borrower in this Agreement or in any other Loan Document, are accurate, complete and correct in all material respects. There has been no material adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects or might materially and adversely affect the use, operation or value of the Property or the business operations or the financial condition of Borrower. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any Provided Information or representation or warranty made herein to be materially misleading.

4.1.34 Investment Company Act. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

4.1.35 Embargoed Person. As of the date hereof and at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person; (b) no Embargoed Person has any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower or Guarantor, as applicable have been derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

4.1.36 Principal Place of Business; State of Organization. Borrower's principal place of business as of the date hereof is the address set forth in the introductory paragraph of this Agreement. The Borrower is organized under the laws of the State of Delaware.

4.1.37 Conditional Use Permit. Borrower has obtained an extension or renewal of the conditional use permit for the Property permitting the Property to be used for a self-storage facility.

4.1.38 Mortgage Taxes. As of the date hereof, Borrower represents that it has paid all state, county and municipal recording and all other taxes imposed upon the execution and recordation of the Mortgage.

4.1.39 Zoning. The Project Improvements can be developed and constructed in accordance with the Plans and Specifications “as of right” without requiring the issuance of any zoning variance or other discretionary permit and/or approval.

4.1.40 ICIP Eligibility. Borrower has applied for a Certificate of Eligibility under the Industrial and Commercial Incentive Program and has submitted all documents necessary to obtain such Certificate of Eligibility.

4.1.41 Single Purpose; Borrower’s Prior Acts. Borrower hereby represents and warrants to Lender that:

(a) Since its formation, Borrower has not owned any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property.

(b) Since its formation, Borrower has not engaged in any business other than the ownership, management and operation of the Property and Borrower has conducted and operated its business as presently conducted and operated.

(c) Since its formation, Borrower has not entered into any contract or agreement with any of its Affiliates, any of its constituent parties or any Affiliate of any constituent party, except those (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are substantially similar to those that would be obtained in a comparable arm’s-length transaction with an unrelated third party, and (ii) in connection with this Agreement.

(d) Since its formation, Borrower has not incurred any Indebtedness.

(e) Since its formation, Borrower has not made any loans to any Person or held evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity).

(f) Since its formation, Borrower has remained solvent and has paid its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its own assets and generally as the same have become due.

(g) Since its formation, Borrower, has done or caused to be done all things necessary to observe its respective organizational formalities applicable to a business entity of its

type and to preserve their respective existence or has promptly taken curative action with respect thereto.

(h) Since its formation, (i) Borrower has maintained all of its respective accounts (including bank accounts), books and records separate from those of its Affiliates and any constituent party; (ii) Borrower has maintained separate financial statements and its respective assets have not been listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity; (iii) Borrower has filed its own tax returns and has not filed a consolidated federal income tax return with any other Person, except to the extent that Borrower was required to file consolidated tax returns by law; and (iv) Borrower has maintained books, records, resolutions and agreements as official records.

(i) Since its formation, Borrower has been, and at all times has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person, except for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in **Subsection (h)** above, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower, has conducted business in its own name; has not identified itself or any of its Affiliates as a division or part of the other; and has used separate stationery, invoices and checks bearing its own name and not the name of any Affiliate.

(j) Since its formation, Borrower has maintained adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Since its formation, neither Borrower has, nor have any of its constituent parties, have sought or effected the liquidation, dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of Borrower.

(l) Since its formation, Borrower has not commingled its funds or other assets with those of any Affiliate or constituent party or any other Person, and Borrower, has held all of its assets in its own name.

(m) Since its formation, Borrower has maintained its assets in such a manner that it would not be costly or difficult to segregate, ascertain or identify their respective individual assets from those of any Affiliate or constituent party or any other Person.

(n) Since its formation, Borrower has not guaranteed or become obligated for the debts of any other Person and has not held itself out to be responsible for or to have their respective credit available to satisfy the debts or obligations of any other Person.

(o) Borrower is presently conducting its business so that the assumptions made with respect to Borrower in the Insolvency Opinion are currently true and correct in all material respects.

(p) Since its formation, Borrower has not permitted any Affiliate or constituent party independent access to its bank accounts.

(q) Since its formation, Borrower has paid the salaries of its own employees (if any) from its own funds and has maintained a sufficient number of employees (if any) in light of their respective contemplated business operations.

(r) Since its formation, Borrower has compensated each of its consultants and agents from its own funds for services provided to it and pay from its own respective assets all obligations of any kind incurred.

(s) Since its date of formation, Borrower has not acquired any obligations or securities of any of its Affiliates.

(t) Since the date of its formation, Borrower has not acquired or held any interest in or formed any entity or subsidiary.

4.1.42 Cash Management Account. Borrower hereby represents and warrants to Lender that:

(a) This Agreement, together with the other Loan Documents, create a valid and continuing security interest (as defined in the Uniform Commercial Code of the State of Delaware) in the Clearing Account and Cash Management Account in favor of Lender, which security interest is prior to all other Liens, other than Permitted Encumbrances, and is enforceable as such against creditors of and purchasers from Borrower. Other than in connection with the Loan Documents and except for Permitted Encumbrances, Borrower has not sold, pledged, transferred or otherwise conveyed the Clearing Account and Cash Management Account;

(b) Each of the Clearing Account and Cash Management Account constitutes a “deposit account” within the meaning of the Uniform Commercial Code of the State of Delaware;

(c) Pursuant and subject to the terms hereof, the Clearing Bank and the Cash Management Bank have agreed to comply with all instructions originated by Lender, without further consent by Borrower, directing disposition of the Clearing Account and Cash Management Account and all sums at any time held, deposited or invested therein, together with any interest or other earnings thereon, and all proceeds thereof (including proceeds of sales and other dispositions), whether accounts, general intangibles, chattel paper, deposit accounts, instruments, documents or securities; and

(d) The Clearing Account and Cash Management Account are not in the name of any Person other than Borrower, as pledgor, or Lender, as pledgee. Borrower has not consented to the Clearing Bank and the Cash Management Bank complying with instructions

with respect to the Clearing Account and Cash Management Account from any Person other than Lender.

4.1.43 *Trade Name; Other Intellectual Property*. Borrower owns and possesses or licenses (as the case may be) all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights, websites, domain names and copyrights, as Borrower considers necessary for the conduct of its business as now conducted without, individually or in the aggregate, any infringement upon rights of other Persons, in each case except as could not reasonably be expected to (i) materially and adversely affect the value of the Property, (ii) impair the use and operation of the Property or (iii) impair Borrower's ability to pay its obligations in a timely manner, and there is no individual patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right or copyright the loss of which would (i) materially and adversely affect the value of the Property, (ii) impair the use and operation of the Property or (iii) impair Borrower's ability to pay its obligations in a timely manner (collectively, the "**Intellectual Property**").

4.1.44 *General Contractor's Agreement*. As of the date hereof, (i) the General Contractor's Agreement is in full force and effect; (ii) Borrower and General Contractor are in full compliance with their respective obligations under the General Contractor's Agreement; (iii) the work to be performed by General Contractor under the General Contractor's Agreement is the work called for by the Plans and Specifications; and (iv) all work on the Project Improvements heretofore completed has been completed in accordance with the Plans and Specifications in a good and workmanlike manner and is free of any defects. Borrower shall from time to time, upon request by Lender, cause General Contractor to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

4.1.45 *Architect's Contract*. As of the date hereof, (i) the Architect's Contract is in full force and effect; (ii) both Borrower and, to the best of Borrower's knowledge, Borrower's Architect are in compliance in all material respects with their respective obligations under the Architect's Contract; (iii) the work to be performed by Borrower's Architect under the Architect's Contract is the architectural services required to design the Project Improvements to be built in accordance with the Plans and Specifications and all architectural services required to complete the Project Improvements in accordance with the Plans and Specifications is provided for under the Architect's Contract; and (iv) all work on the Project Improvements heretofore completed has been completed in accordance with the Plans and Specifications in a good and workmanlike manner and is free of any defects. Upon request by Lender, Borrower shall or Borrower shall cause Borrower's Architect to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

4.1.46 *Plans and Specifications*. As of the date hereof, Borrower has furnished Lender true and complete sets of the preliminary Plans and Specifications. The preliminary Plans and Specifications comply with all applicable Legal Requirements, all Governmental Approvals, and all restrictions, covenants and easements affecting the Property, and have been approved by each such Governmental Authority as is required for construction and renovation of the Project Improvements and the General Contractor, Guarantor and Borrower's Architect.

4.1.47 *Budget*. The Development Budget accurately reflects all anticipated Project-Related Costs. Upon the making of the Advances requested in Borrower's Requisition in the manner set forth therein, all materials and labor therefore supplied or performed in connection with the Property will have been paid for in full (subject to the Retainage).

4.1.48 *Feasibility*. Each of the Construction Schedule and the Disbursement Schedule is accurate.

Section 4.2 **Survival of Representations**. Borrower agrees that all of the representations and warranties of Borrower set forth in **Section 4.1** hereof and elsewhere in this Agreement and in the other Loan Documents shall survive for so long as any amount remains owing to Lender under this Agreement or any of the other Loan Documents by Borrower. All representations, warranties, covenants and agreements made in this Agreement or in the other Loan Documents by Borrower shall be deemed to have been relied upon by Lender notwithstanding any investigation heretofore or hereafter made by Lender or on its behalf.

ARTICLE V.

BORROWER COVENANTS

Section 5.1 **Affirmative Covenants**. From the date hereof and until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage encumbering the Property (and all related obligations) in accordance with the terms of this Agreement and the other Loan Documents, Borrower hereby covenants and agrees with Lender that:

5.1.1 *Existence; Compliance with Legal Requirements*. Borrower shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall never permit any other Person in occupancy of or involved with the operation or use of the Property to commit any act or omission affording the federal government or any state or local government the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and shall keep the Property in good working order and repair, and from time to time make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto, all as more fully provided in the Mortgage. Borrower shall keep the Property insured at all times by financially sound and reputable insurers, to such extent and against such risks, and maintain liability and such other insurance, as is more fully provided in this Agreement. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding promptly initiated and conducted in good faith and with due diligence, the validity of any Legal Requirement, the applicability of any Legal Requirement to Borrower or the Property or any alleged violation of any Legal Requirement, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do

so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof comply with any such Legal Requirement determined to be valid or applicable or cure any violation of any Legal Requirement; (vi) such proceeding shall suspend the enforcement of the contested Legal Requirement against Borrower or the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure compliance with such Legal Requirement, together with all interest and penalties payable in connection therewith. Lender may apply any such security, as necessary to cause compliance with such Legal Requirement at any time when, in the reasonable judgment of Lender, the validity, applicability or violation of such Legal Requirement is finally established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost.

5.1.2 *Taxes and Other Charges.* Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of **Section 7.1** hereof. Borrower will deliver to Lender receipts for payment or other evidence satisfactory to Lender that the Taxes and Other Charges have been so paid or are not then delinquent no later than ten (10) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges prior to the date the same shall become delinquent (provided, however, Borrower is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Lender pursuant to **Section 7.1** hereof). Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien or charge whatsoever which may be or become a Lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Other Charges, provided that (i) no Default or Event of Default has occurred and remains uncured; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Mortgage; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable statutes, laws and ordinances; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) Borrower shall promptly upon final determination thereof pay the amount of any such Taxes or Other Charges, together with all costs, interest and penalties which may be payable in connection therewith; (vi) such proceeding shall suspend the collection of such contested Taxes or Other Charges from the Property; and (vii) Borrower shall furnish such security as may be required in the proceeding, or as may be requested by Lender, to insure the payment of any such Taxes or Other Charges, together with all interest and penalties thereon. Lender may pay over any such cash deposit or part thereof held by Lender to the claimant

entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established or the Property (or part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, cancelled or lost or there shall be any danger of the Lien of the Mortgage being primed by any related Lien.

5.1.3 Litigation. Borrower shall give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened against Borrower and/or Guarantor which, might materially adversely affect Borrower's or Guarantor's condition (financial or otherwise) or business or the Property.

5.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice and subject to the rights of Tenants under Leases.

5.1.5 Notice of Default. Borrower shall promptly advise Lender of any material adverse change in Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Borrower has knowledge.

5.1.6 Cooperate in Legal Proceedings. Borrower shall cooperate fully with Lender with respect to any proceedings before any court, board or other Governmental Authority which may in any way affect the rights of Lender hereunder or any rights obtained by Lender under any of the other Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

5.1.7 Perform Loan Documents. Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions of, and shall pay when due all costs, fees and reasonable expenses to the extent required under the Loan Documents executed and delivered by, or applicable to, Borrower.

5.1.8 Award and Insurance Benefits. Borrower shall cooperate with Lender in obtaining for Lender the benefits of any Awards or Insurance Proceeds lawfully or equitably payable in connection with the Property, and Lender shall be reimbursed for any expenses incurred in connection therewith (including attorneys' fees and disbursements, and the payment by Borrower of the expense of an appraisal on behalf of Lender in case of Casualty or Condemnation affecting the Property or any part thereof) out of such Insurance Proceeds.

5.1.9 Further Assurances. Borrower shall, at Borrower's sole cost and expense:

(a) furnish to Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements, and each and every other document, certificate, agreement and instrument required to be furnished by Borrower pursuant to the terms of the Loan Documents or which are reasonably requested by Lender in connection therewith;

(b) execute and deliver to Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the obligations of

Borrower under the Loan Documents, as Lender may reasonably require including, without limitation, the execution and delivery of all such writings necessary to transfer any licenses with respect to the Property into the name of Lender or its designee after the occurrence of an Event of Default; and

(c) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Lender shall reasonably require from time to time.

5.1.10 *Principal Place of Business, State of Organization.* Borrower will not cause or permit any change to be made in its name, identity (including its trade name or names), place of organization or formation (as set forth in **Section 4.1.36** hereof) or Borrower's corporate or partnership structure unless Borrower shall have first notified Lender in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all reasonable action required by Lender for the purpose of perfecting or protecting the lien and security interests of Lender pursuant to this Agreement, the Cash Management Agreement and the other Loan Documents and, in the case of a change in Borrower's structure, without first obtaining the prior consent of Lender. Upon Lender's request, Borrower shall execute and deliver additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business or place of organization. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, including recorded data of any kind or nature, regardless of the medium or recording, including software, writings, plans, specifications and schematics, has been for the preceding four months (or, if less, the entire period of the existence of Borrower) and will continue to be the address of Borrower set forth at the introductory paragraph of this Agreement (unless Borrower notifies Lender in writing at least thirty (30) days prior to the date of such change). Borrower's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth in the introductory paragraph of this Agreement. Borrower shall promptly notify Lender of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower promptly shall notify Lender of such organizational identification number.

5.1.11 *Financial Reporting.*

(a) Borrower will keep and maintain or will cause to be kept and maintained on a Fiscal Year basis, in accordance with GAAP (or such other accounting basis acceptable to Lender), proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. Lender shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Borrower or any other Person maintaining such books, records and accounts and to make such copies or extracts thereof as Lender shall desire at Lender's expense unless an Event of Default shall have occurred. After the occurrence of an Event of Default, Borrower shall pay any costs and expenses incurred by Lender to examine Borrower's accounting records with respect to the Property, as Lender shall determine to be necessary or appropriate in the protection of Lender's

interest. Upon Lender's reasonable request, Borrower shall deliver to Lender such other information necessary and sufficient to fairly represent the financial condition of Borrower and the Property.

(b) Borrower will furnish to Lender annually, within one hundred twenty (120) days following the end of each Fiscal Year of Borrower, a complete copy of Borrower's annual financial statements covering the Property for such Fiscal Year audited by a "**Big Four**" accounting firm or other independent certified public accountant acceptable to Lender in accordance with GAAP and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition and the results of operations for the Property for such Fiscal Year, and shall include, but not be limited to, amounts representing annual Net Cash Flow, Net Operating Income, Gross Income from Operations and Operating Expenses. Borrower's annual financial statements shall be accompanied by (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior Fiscal Year, (ii) an Officer's Certificate stating that each such annual financial statement presents fairly the financial condition and the results of operations of Borrower and the Property being reported upon and has been prepared in accordance with GAAP; (iii) a list of tenants, if any, occupying more than twenty percent (20%) of the total floor area of the Improvements, (iv) a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area of the Improvements and the percentage of base rent with respect to which Leases shall expire in each such year, each such percentage to be expressed on both a per year and cumulative basis, and (v) a schedule audited by such independent certified public accountant reconciling Net Operating Income to Net Cash Flow (the "**Net Cash Flow Schedule**"), which shall itemize all adjustments made to Net Operating Income to arrive at Net Cash Flow deemed material by such independent certified public accountant. Together with Borrower's annual financial statements, Borrower shall furnish to Lender an Officer's Certificate certifying as of the date thereof whether there exists an event or circumstance which constitutes a Default or Event of Default under the Loan Documents executed and delivered by, or applicable to, Borrower, and if such Default or Event of Default exists, the nature thereof, the period of time it has existed and the action then being taken to remedy the same.

(c) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month throughout the term of the Loan the following items, accompanied by an Officer's Certificate stating that such items are true, correct, accurate, and complete and fairly present the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable: monthly and year-to-date operating statements (including Capital Expenditures) prepared for each calendar month, noting all Net Operating Income, Gross Income from Operations and Operating Expenses (not including any contributions to the Reserve Funds) and other information necessary and sufficient to fairly represent the financial position and results of operation of the Property during such calendar month, and containing (i) a comparison of budgeted income and expenses and the actual income and expenses together with a detailed explanation of any variances of five percent (5%) or more between budgeted and actual amounts for such periods, for any individual items in excess of \$10,000, all in form satisfactory to Lender, (ii) a calculation reflecting the annual Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month accompanied by an Officers' Certificate with respect thereto; and (iii) a Net

Cash Flow Schedule. In addition, such Officer's Certificate shall also state that the representations and warranties of Borrower set forth in **Section 4.1.30** and **Section 4.1.35** are true and correct as of the date of such certificate and that there are no trade payables outstanding for more than sixty (60) days.

(d) Borrower will furnish, or cause to be furnished, to Lender on or before thirty (30) days after the end of each calendar month throughout the term of the Loan, an rent roll for the subject month, accompanied by an Officer's Certificate stating that such rent roll is true, correct, accurate, and complete and fairly presents the financial condition and results of the operations of Borrower and the Property (subject to normal year-end adjustments) as applicable.

(e) For the partial year period commencing on the date of the Closing Date, and for each Fiscal Year thereafter, Borrower shall submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such period or Fiscal Year in form reasonably satisfactory to Lender. The Annual Budget shall be subject to Lender's written approval (each such Annual Budget, an "**Approved Annual Budget**"). In the event that Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this subsection until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recent Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual increases in Taxes, Insurance Premiums and Other Charges.

(f) In the event that, Borrower must incur an extraordinary operating expense or capital expense not set forth in the Approved Annual Budget (each an "**Extraordinary Expense**"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval, except in the case of emergency (provided that Borrower will notify Lender promptly after such emergency).

(g) Any reports, statements or other information required to be delivered under this Agreement shall be delivered (i) in paper form, (ii) on a diskette, and (iii) if requested by Lender and within the capabilities of Borrower's data systems without change or modification thereto, in electronic form and prepared using a Microsoft Word for Windows or WordPerfect for Windows files (which files may be prepared using a spreadsheet program and saved as word processing files). Borrower agrees that Lender may disclose information regarding the Property and Borrower that is provided to Lender pursuant to this **Section 5.1.11** in connection with the Securitization to such parties requesting such information in connection with such Securitization.

5.1.12 **Business and Operations.** Borrower will continue to engage in the businesses presently conducted by it as and to the extent the same are necessary for the ownership, maintenance, management and operation of the Property. Borrower will qualify to do business and will remain in good standing under the laws of all relevant jurisdictions as and to the extent the same are required for the ownership, maintenance, management and operation of

the Property. Borrower shall at all times during the term of the Loan, continue to own and/or maintain all of the Equipment, Fixtures and Personal Property which are necessary to operate the Property in the manner required hereunder and in the manner in which it is currently operated.

5.1.13 *Title to the Property.* Borrower will warrant and defend (a) the title to the Property and every part thereof, subject only to Liens permitted hereunder (including Permitted Encumbrances) and (b) the validity and priority of the Lien of the Mortgage and the Assignment of Leases on the Property, subject only to Liens permitted hereunder (including Permitted Encumbrances), in each case against the claims of all Persons whomsoever. Borrower shall reimburse Lender for any losses, costs, damages or expenses (including reasonable attorneys' fees and court costs) incurred by Lender if an interest in the Property, other than as permitted hereunder, is claimed by another Person.

5.1.14 *Costs of Enforcement.* In the event (a) that the Mortgage encumbering the Property is foreclosed in whole or in part or that the Mortgage is put into the hands of an attorney for collection, suit, action or foreclosure, (b) of the foreclosure of any mortgage encumbering the Property prior to or subsequent to the Mortgage in which proceeding Lender is made a party, or (c) of the bankruptcy, insolvency, rehabilitation or other similar proceeding in respect of Borrower or any of its constituent Persons or an assignment by Borrower or any of its constituent Persons for the benefit of its creditors, Borrower, its successors or assigns, shall be chargeable with and agrees to pay all costs of collection and defense, including attorneys' fees and costs, incurred by Lender or Borrower in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, together with all required service or use taxes.

5.1.15 *Estoppel Statement.*

(a) After written request by Lender, Borrower shall within ten (10) days furnish Lender with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Agreement, the Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) Borrower shall deliver to Lender upon written request, tenant estoppel certificates from each tenant paying base rent in an amount equal to or exceeding five percent (5%) of the Gross Income from Operations from the Property occupied by such tenant in form and substance reasonably satisfactory to Lender provided that Borrower shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

(c) After written request by Borrower, Lender shall within ten (10) days furnish Borrower with a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the Interest Rate of the Note, and (iv) the date installments of interest and/or principal were last paid.

5.1.16 Loan Proceeds. Borrower shall use the proceeds of the Loan solely and exclusively for the purposes of constructing and renovating the Project Improvements in accordance herewith and in accordance with the Building Loan Budget which shall be subject to no change except as permitted hereby. Borrower will receive the Advances to be made hereunder and will hold the right to receive the same as a trust fund for the purpose of paying the Costs of the Improvement and it will apply the same first to such payment before using any part thereof for any other purpose.

5.1.17 Performance by Borrower. Borrower shall in a timely manner observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by, or applicable to, Borrower, and shall not enter into or otherwise suffer or permit any amendment, waiver, supplement, termination or other modification of any Loan Document executed and delivered by, or applicable to, Borrower without the prior written consent of Lender.

5.1.18 Confirmation of Representations. Borrower shall deliver, in connection with any Securitization, (a) one (1) or more Officer's Certificates certifying as to the accuracy of all representations made by Borrower in the Loan Documents as of the date of the closing of such Securitization in all relevant jurisdictions, and (b) certificates of the relevant Governmental Authorities in all relevant jurisdictions indicating the good standing and qualification of Borrower and Guarantor as of the date of the Securitization.

5.1.19 ICIP Eligibility. Borrower shall take all actions necessary to obtain a Certificate of Eligibility under the Industrial and Commercial Incentive Program as soon as possible.

5.1.20 Leasing Matters. Borrower may not enter into a Lease, license or other occupancy agreement for any portion of the Property without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that after the Property shall have achieved the Required Ratios at Completion, Borrower shall not be required to obtain Lender's approval of Leases for less than 15,000 square feet that otherwise satisfy the requirements of this Agreement. Upon request, Borrower shall furnish Lender with executed copies of all Leases. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates. All proposed Leases shall be on commercially reasonable terms and shall not contain any terms which would materially affect Lender's rights under the Loan Documents. All Leases executed after the date hereof shall provide that they are subordinate to the Mortgage and that the lessee agrees to attorn to Lender or any purchaser at a sale by foreclosure or power of sale. Borrower (i) shall observe and perform the obligations imposed upon the lessor under the Leases in a commercially reasonable manner; (ii) shall enforce and may amend or terminate the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed in a commercially reasonable manner and in a manner not to impair the value of the Property involved except that no termination by Borrower or acceptance of surrender by a tenant of any Leases shall be permitted unless by reason of a tenant default and then only in a commercially reasonable manner to preserve and protect the Property; provided, however, that no such termination or surrender of any Lease will be permitted without the written consent of Lender, provided, further, that after the Property shall have achieved the Required Ratios at Completion, Borrower

shall not be required to obtain Lender's approval for termination of Leases for less than 15,000 square feet that otherwise satisfy the requirements of this Agreement; (iii) shall not collect any of the rents more than one (1) month in advance (other than security deposits); (iv) shall not execute any other assignment of lessor's interest in the Leases or the Rents (except as contemplated by the Loan Documents); (v) shall not alter, modify or change the terms of the Leases in a manner inconsistent with the provisions of the Loan Documents without Lender's prior written consent which shall not be unreasonably withheld; and (vi) shall execute and deliver at the request of Lender all such further assurances, confirmations and assignments in connection with the Leases as Lender shall from time to time reasonably require. Notwithstanding anything to the contrary contained herein, Borrower shall not enter into a lease of all or substantially all of the Property without Lender's prior written consent.

5.1.21 Alterations.

(a) Following the Completion of the Improvements, Borrower shall obtain Lender's prior written consent to any subsequent alterations to any Improvements, which consent shall not be unreasonably withheld or delayed except with respect to alterations that may have a material adverse effect on Borrower's financial condition or the value of the Property or the Net Operating Income. Notwithstanding the foregoing, Lender's consent shall not be required in connection with (i) any alterations that will not have a material adverse effect on Borrower's financial condition or the value of the Property or the Net Operating Income, and not adversely affecting any structural component of any Improvements, any utility or HVAC system contained in any Improvements or the exterior of any building constituting a part of any Improvements, or (ii) alterations performed in connection with the Restoration of the Property after the occurrence of a Casualty or Condemnation in accordance with the terms and provisions of this Agreement. If the total unpaid amounts due and payable with respect to alterations to the Improvements at the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) shall at any time exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "**Threshold Amount**"), Borrower shall promptly deliver to Lender as security for the payment of such amounts and as additional security for Borrower's obligations under the Loan Documents any of the following: (A) cash, (B) U.S. Obligations, (C) other securities having a rating acceptable to Lender and that the applicable Rating Agencies have confirmed in writing will not, in and of itself, result in a downgrade, withdrawal or qualification of the initial, or, if higher, then current ratings assigned to any Securities or any class thereof in connection with any Securitization, (D) a completion and performance bond, or (E) a Letter of Credit. Such security shall be in an amount equal to the excess of the total unpaid amounts with respect to alterations to the Improvements on the Property (other than such amounts to be paid or reimbursed by tenants under the Leases) over the Threshold Amount and Lender may apply such security from time to time at the option of Lender to pay for such alterations.

(b) Notwithstanding anything contained herein to the contrary, the construction, Building Loan and alteration of the Improvements in accordance with the Plans and Specifications shall not constitute "alterations" to the Improvements and will not be subject to the terms of this **Section 5.1.21**.

5.1.22 No Fees or Payments to Affiliates. In no event shall Borrower pay any fees or make any payments to any Affiliates without Lender's approval, which may be withheld in its sole discretion.

5.1.23 Payment of Administration Fee. Borrower shall pay to Lender on the first (1st) day of each calendar month the Administration Fee in advance.

5.1.24 General Contractor's Agreement. Borrower shall (a) enforce the General Contractor's Agreement in the best interests of the Improvements using sound business judgment, (b) waive none of the material obligations of any of the parties thereunder, (c) do no act which would relieve the General Contractor from its material obligations to construct the Project Improvements according to the Plans and Specifications, (d) make no amendments to or change orders under the General Contractor's Agreement, except as permitted under this Agreement, without the prior approval of Lender, (e) ensure that the work to be performed by General Contractor under the General Contractor's Agreement is the work called for by the Plans and Specifications, and (f) ensure that all work on the Improvements shall be completed in accordance with the Plans and Specifications in a good and workmanlike manner and shall be free of any defects. Borrower shall from time to time, upon request by Lender, use reasonable efforts to cause General Contractor to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

5.1.25 Architect's Contract. Borrower shall enforce the Architect's Contract in the best interests of Borrower consistent with the construction of the Project Improvements using sound business judgment, (b) waive none of the material obligations of Borrower's Architect thereunder, (c) do no act which would relieve Borrower's Architect from its material obligations under the Architect's Contract and (d) make no amendments to the Architect's Contract without the prior approval of Lender. Upon request by Lender, Borrower shall cause Borrower's Architect to provide Lender with reports in regard to the status of construction of the Project Improvements, in such form and detail as reasonably requested by Lender.

5.1.26 Building Loan Costs and Expenses. Borrower shall promptly pay when due all Building Loan Costs.

5.1.27 Fees. Borrower shall pay when due the reasonable fees of the Construction Consultant, all reasonable costs and expenses, including, without limitation, appraisal fees (only if required by law after the initial appraisal) recording fees and charges, abstract fees, title policy fees, escrow fees, reasonable attorneys' fees, fees of inspecting architects and engineers to the extent provided hereunder in connection with Advances, fees of environmental consultants to the extent provided in the Mortgage, and all other reasonable and customary costs and expenses which have been incurred or which may hereafter be incurred by Lender in connection with the preparation and execution of the Loan Documents, including any extension, amendment or modification thereof; the funding of the Loan, the administration and enforcement of this Agreement, the Mortgage, the Note, and the other Loan Documents, including, without limitation, reasonable attorneys' fees in any action for the foreclosure of the Mortgage and the collection of the Loan, and all such fees incurred in connection with any bankruptcy or insolvency proceeding; and Borrower will, within twenty (20) days after demand

by Lender, reimburse Lender for all such expenses which have been incurred; and Borrower will indemnify and hold harmless Lender from and against, and reimburse it for all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against Lender or Borrower on account of any act performed or omitted to be performed hereunder by Borrower or on account of any transaction arising out of or in any way connected with the Property, or with this Agreement or any of the indebtedness evidenced by the Note, provided that the foregoing indemnity shall not apply to any such liabilities, losses, damages and expenses of Lender to the extent arising from the willful misconduct or gross negligence of Lender. All amounts incurred or paid by Lender under this **Section 5.1.27**, together with interest thereon at the Default Rate from the due date until paid by Borrower, shall be added to the Debt and shall be secured by the lien of the Mortgage.

5.1.28 *Completion of Construction.*

(a) Borrower shall cause the Project Improvements to be constructed in accordance with the Plans and Specifications and any Permitted Encumbrance and in full compliance with the Building Loan Budget, as the same may be amended from time to time in accordance with the terms hereof.

(b) Borrower shall cause the Completion of the Improvements to occur on or before the Required Completion Date.

(c) Borrower shall diligently pursue construction of the entire Project Improvements to cause the Complete of the Improvements and obtain a temporary or permanent certificate of occupancy (and to the extent the same are conditional or require performance by Borrower, satisfy all conditions to the issuance of and/or performed all obligations required for the continued validity of the same) for the Property on or prior to the Required Completion Date, in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Property, all applicable Legal Requirements, and all Governmental Approvals, and with all terms and conditions of the Loan Documents; pay all sums and to perform such duties as may be necessary to complete such construction of the Project Improvements substantially in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Property, all Legal Requirements and all Governmental Approvals, and with all terms and conditions of the Loan Documents, all of which shall be accomplished on or before the Required Completion Date, free from any liens, claims or assessments (actual or contingent) asserted against the Property for any material, labor or other items furnished in connection therewith unless bonded and removed as a Lien on the Property. The renovation of the Project Improvements shall include all work necessary to put the Property in conformity with, and eliminate any breaches from, the ADA. Evidence of satisfactory compliance with all of the foregoing shall be furnished by Borrower to Lender on or before the Required Completion Date. In addition, if such certificate of occupancy or other Governmental Approvals are temporary in nature, Borrower shall diligently pursue procuring final Governmental Approvals. In addition, Borrower shall diligently pursue

construction of the entire Project Improvements to Final Completion after the Required Completion Date.

(d) If at any time prior to the Completion of the Improvements and satisfaction of the conditions to the Final Advance Lender determines in its sole discretion that the undrawn funds then available under the Interest Reserve Line Item of the Project Loan Budget and the amount of Interest Reserve Funds on deposit with Lender is insufficient to pay the Debt Service on the Loan, then, Borrower shall deposit with Lender, on demand, either (i) an amount reasonably determined by Lender to pay interest on the Loan as it comes due prior to the Completion of the Improvements and the satisfaction of the conditions to the Final Advance (the “**Additional Interest Reserve Deposit**”), or (ii) a Letter of Credit in such amount (the “**Additional Interest Reserve Letter of Credit**”). In determining the amount of the Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit, Lender will consider, among other things, (i) the degree of completion of the Improvements on such date, and (ii) the amount, if any, of undrawn funds then available under the Interest Reserve Line Item of the Project Loan Budget. In addition, and subject to the applicable terms hereof and the applicable terms of the Project Loan Agreement regarding the re-allocation of Line Items, Lender shall not unreasonably withhold its consent to Borrower’s request at the time of the deposit of the Additional Interest Reserve Deposit or the Additional Interest Reserve Letter of Credit to re-allocate a portion of the then undrawn Contingency Line Item (or any other Line Item within the Building Loan Budget) from the Project Loan Budget to the Interest Reserve Line Item of the Project Loan Budget, provided, however, under no circumstances may any portion of the Contingency Line Item of the Building Loan Budget be reallocated to the Interest Reserve Line Item. The Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit shall be a Reserve Fund for all purposes hereunder. Lender shall apply the Additional Interest Reserve Deposit or Additional Interest Reserve Letter of Credit in accordance with **Section 7.2** hereof.

5.1.29 *Inspection of Property.* Borrower shall permit Lender, the Construction Consultant and their respective representatives, to enter upon the Property, inspect the Project Improvements and all materials to be used in the construction and Building Loan thereof and to examine the Plans and Specifications which are or may be kept at the construction site and will cooperate, and cause the General Contractor, the Major Contractors and the Major Subcontractors to cooperate with the Construction Consultant to enable him or her to perform his or her functions hereunder.

5.1.30 *Construction Consultant.* Borrower acknowledges that (i) the Construction Consultant has been retained by Lender to act as a consultant and only as a consultant to Lender in connection with the construction of the Project Improvements and has no duty to Borrower, (ii) the Construction Consultant shall in no event have any power or authority to give any approval or consent or to do any other act or thing which is binding upon Lender, (iii) Lender reserves the right to make any and all decisions required to be made by Lender under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Lender under this Agreement and to accept or not accept any matter or thing required to be accepted by Lender under this Agreement, and without being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by the

Construction Consultant with respect thereto, (iv) Lender reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by the Construction Consultant to Lender or any other person or party, and (v) Lender reserves the right to replace the Construction Consultant with another construction consultant at any time and without prior notice to or approval by Borrower.

5.1.31 Construction Consultant/Duties and Access. Borrower shall permit Lender to retain the Construction Consultant at the reasonable cost of Borrower to perform the following services on behalf of Lender:

- (a) Prepare the Final Project Report;
- (b) To review and advise Lender whether, in the opinion of the Construction Consultant, the Plans and Specifications are satisfactory;
- (c) To review Draw Requests and change orders; and

(d) To make periodic inspections in accordance with **Section 5.1.29** (approximately at the date of each Draw Request) for the purpose of assuring that construction of the Project Improvements to date is in accordance with the Plans and Specifications and to approve Borrower's then current Draw Request as being consistent with Borrower's Obligations under this Agreement.

The fees of the Construction Consultant shall be paid by Borrower within thirty (30) days after billing therefor and expenses incurred by Lender on account thereof shall be reimbursed to Lender within thirty (30) days after request therefor, but neither Lender nor the Construction Consultant shall have any liability to Borrower on account of (i) the services performed by the Construction Consultant, (ii) any neglect or failure on the part of the Construction Consultant to properly perform its services or (iii) any approval by the Construction Consultant of construction of the Project Improvements. Neither Lender nor the Construction Consultant assumes any obligation to Borrower or any other Person concerning the quality of construction of the Project Improvements or the absence therefrom of defects.

5.1.32 Correction of Defects. Borrower shall promptly correct all material defects in the Project Improvements or any material departure from the Plans and Specifications not previously approved by Lender to the extent required hereunder. Borrower agrees that the advance of any proceeds of the Loan whether before or after such defects or departures from the Plans and Specifications are discovered by, or brought to the attention of, Lender shall not constitute a waiver of Lender's right to require compliance with this covenant.

5.1.33 Approval of Change Orders; Cost Savings. Borrower shall permit no deviations from the Plans and Specifications during construction without the prior approval of Lender; provided, however, that Borrower may make changes without Lender's prior written approval so long as (a) with respect to any Major Contract or Major Subcontract, such changes do not exceed two percent (2%) of the amount of the applicable contract, (b) such changes do not exceed in the aggregate \$250,000.00, provided that changes which have been approved by Lender either before or after such changes have been made shall be disregarded in calculating

said \$250,000.00 threshold, (c) such changes do not cause any line item in the Building Loan Budget to be exceeded (after taking into account use of the Contingency Reserve to the extent permitted under **Section 2.1.7**, reallocations under this **Section 5.1.33** and other reallocations approved by Lender in its sole discretion), (d) Borrower uses reasonable efforts to deliver to Lender and Construction Consultant prior notice of such change orders or, if Borrower is unable to deliver prior notice, Borrower shall submit to Lender and Construction Consultant copies of all change orders entered into with respect to the Project Improvements within fifteen (15) days after the same are entered into, irrespective of whether the same require the prior approval of Lender and Construction Consultant pursuant to this Agreement, (e) such changes will not materially change the gross square feet or the net rentable square feet of commercial space to be contained in the Improvements, or the basic layout of the Improvements, or involve the use of materials, furniture, fixtures and equipment that will not be at least equal in quality to the materials, furniture, fixtures and equipment originally specified in or required by the approved Plans and Specifications, and (f) such change will not prevent Borrower from completing the Project Improvements by the Required Completion Date. The foregoing notwithstanding, Borrower may allocate cost savings actually achieved and verifiable in any line item of the Building Loan Budget to other line items of the Building Loan Budget, provided that if such costs savings are being allocated from a line item of the Building Loan Budget, (i) such Building Loan Budget line item has a firm contract or sub-contract in place, (ii) the work has commenced and is proceeding in accordance with the Construction Schedule and (iii) the Construction Consultant is satisfied with said contract or sub-contract, including, without limitation, with regard to the scope of said contract or sub-contract.

5.1.34 *Building Permits*.. Prior to commencing any phase of the demolition or construction of the Project Improvements, Borrower shall obtain and deliver to Lender all building permits and other Governmental Approvals required for the phase of construction of the Project Improvements to be undertaken by Borrower.

5.1.35 *Easements and Restrictions; Zoning*. Borrower shall submit to Lender for Lender's approval prior to the execution thereof by Borrower all proposed easements, restrictions, covenants, permits, licenses, and other instruments which would affect the title to the Property, accompanied by a Survey showing the exact proposed location thereof and such other information as Lender shall reasonably require. Borrower shall not subject the Property or any part thereof to any easement, restriction or covenant (including any restriction or exclusive use provision in any lease or other occupancy agreement) without the prior approval of Lender (not to be unreasonably withheld or delayed in the case of utility easements only). Notwithstanding the foregoing, Lender shall consent to a reciprocal easement agreement in connection with the future development of the adjacent development site provided that such reciprocal easement agreement is reasonably acceptable to Lender. With respect to any and all existing easements, restrictions, covenants or operating agreements which benefit or burden the Property and any easement, restriction or covenant to which the Property may hereafter be subjected in accordance with the provisions hereof, Borrower shall: (a) observe and perform in all material respects the obligations imposed upon Borrower or the Property; (b) not alter, modify or change the same in any material respect without the prior approval of Lender; (c) enforce its rights thereunder in a commercially reasonable manner so as to preserve for the benefit of the Property the full benefits of the same; and (d) deliver to Lender a copy of any

notice of default or other material notice received by Borrower in respect of the same promptly after Borrower's receipt of such notice.

5.1.36 Laborers, Subcontractors and Materialmen. Borrower shall notify Lender promptly, and in writing, if Borrower receives any default notice, notice of lien or demand for past due payment, written or oral, from any laborer, subcontractor or materialmen. Borrower will also furnish to Lender at any time and from time to time upon reasonable demand by Lender, lien waivers in form reasonably satisfactory to Lender bearing a then current date from the Major Contractors and the Major Subcontractors.

5.1.37 Ownership of Personalty. Borrower shall furnish to Lender, if Lender so requests, photocopies of the fully executed contracts, bills of sale, receipted vouchers and agreements, or any of them, under which Borrower claims title to the materials, articles, fixtures and other personal property used or to be used in the construction or operation of the Improvements.

5.1.38 Comply with Other Loan Documents. Borrower shall perform all of Borrower's Obligations under the Note and the other Loan Documents.

5.1.39 Purchase of Material Under Conditional Sale Contract. Borrower shall not permit any materials, equipment, fixtures or any other part of the Improvements to be purchased or installed under any security agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation in the Property, unless authorized by Lender in writing and in advance.

5.1.40 Further Assurance of Title. If at any time Lender has reason to believe in its reasonable opinion that any Advance is not secured or will or may not be secured by the Mortgage as a first priority lien or security interest on the Improvements (subject only to the Permitted Encumbrances and the Loan Documents), then Borrower shall, within ten (10) days after written notice from Lender, do all things and matters necessary (including execution and delivery to Lender of all further documents and performance of all other acts which Lender reasonably deems necessary or appropriate) to assure to the reasonable satisfaction of Lender that any Advance previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first priority lien or security interest with respect to the Improvements (subject only to the Permitted Encumbrances and the Loan Documents). Lender, at Lender's option, may decline to make further Advances hereunder until Lender has received such assurance.

5.1.41 Management Agreement.

(a) From and after Final Completion, Borrower shall cause the Property to be operated, in all material respects, in accordance with the Management Agreement (or Replacement Management Agreement, as applicable). In the event that the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into

a Replacement Management Agreement with Manager or another Qualified Manager, as applicable.

(b) Borrower shall: (i) promptly perform and/or observe, in all material respects, all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder; (ii) promptly notify Lender of any material default under the Management Agreement of which it is aware; (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement; and (iv) enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by Manager under the Management Agreement, in a commercially reasonable manner.

(c) If: (a) an Event of Default shall have occurred and be continuing, (b) Manager shall become bankrupt or insolvent; (c) a default beyond any applicable notice and/or cure period, if any, occurs under the Management Agreement, or (d) following the Completion of the Improvements, the Debt Service Coverage Ratio (based upon the trailing six (6) month period, annualized) as of any Debt Service Coverage Determination Date is less than 1.05 to 1.0, then, in any such event, Borrower shall, at the request of Lender, terminate the Management Agreement and replace the Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

5.1.42 *Embargoed Person*. Borrower has performed and shall perform reasonable due diligence to insure that at all times throughout the term of the Loan, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower, Principal and Guarantor constitute property of, or are beneficially owned, directly or indirectly, by any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to, The USA PATRIOT Act (including the anti-terrorism provisions thereof), the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder including those related to Specially Designated Nationals and Specially Designated Global Terrorists, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan made by the Lender is in violation of law (“**Embargoed Person**”); (b) no Embargoed Person has any interest of any nature whatsoever in Borrower, Principal or Guarantor, as applicable, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law; and (c) none of the funds of Borrower, Principal or Guarantor, as applicable, have been derived from, or are the proceeds of, any unlawful activity, including money laundering, terrorism or terrorism activities, with the result that the investment in Borrower, Principal or Guarantor, as applicable (whether directly or indirectly), is prohibited by law or the Loan is in violation of law, or may cause the Property to be subject to forfeiture or seizure.

5.1.43 *Environmental Covenants*. Borrower shall remove all underground storage tanks (“**USTs**”) and above-ground storage tanks (“**ASTs**”) as part of the proposed construction of the Project Improvements in accordance with all applicable Legal Requirements

of all Governmental Authorities having jurisdiction over the Property. In addition, all documented and suspected impacted soil and groundwater will be addressed by Borrower in conjunction with the proposed construction. Upon removal of the USTs and AST, all impacted soil and all free product and the residual contamination sources, Borrower shall monitoring the natural attenuation of groundwater contamination in accordance with a monitoring plan approved by Lender. Borrower shall install a sub-slab ventilation system and vapor barrier in conjunction with the Project Improvements as set forth in the Plane and Specifications, Following removal of the ASTs and USTs, Borrower shall notify the United State Environmental Protection Agency and takes all action necessary to de-list the former Riteway Laundry Company as a RCRIS SQG. Borrower shall perform asbestos abatement in accordance with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property prior to the demolition of the existing structures on the Property. Lender shall not be required to make any advances of the Building Loan for any phase of the construction beyond thee demolition of the existing improvements on the Property until the removal of the USTs and ASTs, impacted soil and all asbestos and asbestos containing material has been completed in accordance with this **Section 5.1.34**.

Section 5.2 **Negative Covenants**. From the date hereof until payment and performance in full of all obligations of Borrower under the Loan Documents or the earlier release of the Lien of the Mortgage and any other collateral in accordance with the terms of this Agreement and the other Loan Documents, Borrower covenants and agrees with Lender that it will not do, directly or indirectly, any of the following:

5.2.1 *Intentionally Omitted*.

5.2.2 *Liens*. Borrower shall not create, incur, assume or suffer to exist any Lien on any portion of the Property or permit any such action to be taken, except:

- (i) Permitted Encumbrances;
- (ii) Liens created by or permitted pursuant to the Loan Documents; and
- (iii) Liens for Taxes or Other Charges not yet due.

5.2.3 *Dissolution*. Borrower shall not (a) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership and operation of the Property, (c) transfer, lease or sell, in one transaction or any combination of transactions, the assets or all or substantially all of the properties or assets of Borrower except to the extent permitted by the Loan Documents, or (d) modify, amend, waive or terminate its organizational documents or its qualification and good standing in any jurisdiction in each case, without obtaining the prior written consent of Lender or Lender's designee.

5.2.4 *Change In Business*. Borrower shall not enter into any line of business other than the ownership and operation of the Property, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

5.2.5 Debt Cancellation. Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

5.2.6 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

5.2.7 No Joint Assessment. Borrower shall not suffer, permit or initiate the joint assessment of the Property with (a) any other real property constituting a tax lot separate from the Property, or (b) any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property.

5.2.8 Intentionally Omitted.

5.2.9 ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that (A) Borrower is not and does not maintain an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (B) Borrower is not subject to any state statute regulating investment of, or fiduciary obligations with respect to governmental plans and (C) one or more of the following circumstances is true:

(i) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2);

(ii) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); or

(iii) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e).

5.2.10 Transfers.

(a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust)

beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

(b) Without the prior written consent of Lender, and except to the extent otherwise set forth in this **Section 5.2.10**, Borrower shall not, and shall not permit any Restricted Party do any of the following (collectively, a "**Transfer**"): (i) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, grant options with respect to, or otherwise transfer or dispose of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) the Property or any part thereof or any legal or beneficial interest therein or (ii) permit a Sale or Pledge of an interest in any Restricted Party, other than (A) pursuant to Leases of space in the Improvements to tenants in accordance with the provisions of Section 5.1.20 and (B) Permitted Transfers.

(c) A Transfer shall include, but not be limited to, (i) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger, consolidation or Sale or Pledge of such corporation's stock or the creation or issuance of new stock; (iv) if a Restricted Party is a limited or general partnership or joint venture, any merger or consolidation or the change, removal, resignation or addition of a general partner or the Sale or Pledge of the partnership interest of any general partner or any profits or proceeds relating to such partnership interest, or the Sale or Pledge of limited partnership interests or any profits or proceeds relating to such limited partnership interest or the creation or issuance of new limited partnership interests; (v) if a Restricted Party is a limited liability company, any merger or consolidation or the change, removal, resignation or addition of a managing member or non-member manager (or if no managing member, any member) or the Sale or Pledge of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest, or the Sale or Pledge of non-managing membership interests or the creation or issuance of new non-managing membership interests; (vi) if a Restricted Party is a trust or nominee trust, any merger, consolidation or the Sale or Pledge of the legal or beneficial interest in a Restricted Party or the creation or issuance of new legal or beneficial interests; or (vii) the removal or the resignation of the managing agent (including, without limitation, an Affiliated Manager) other than in accordance with Section 5.1.22 hereof.

(d) Notwithstanding the provisions of this **Section 5.2.10**, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) of the stock, the limited partnership interests or non-managing membership interests (as the case may be) in a Restricted Party; provided, however, no such Transfer shall result in the change of Control in a Restricted Party, and as a condition to each such Transfer, Lender shall receive not less than thirty (30) days prior notice of such proposed Transfer. If after

giving effect to any such Transfer, more than forty-nine percent (49%) in the aggregate of direct or indirect interests in a Restricted Party are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) direct or indirect interest in such Restricted Party as of the Closing Date, Borrower shall, no less than thirty (30) days prior to the effective date of any such Transfer, deliver to Lender an Additional Insolvency Opinion acceptable to Lender and the Rating Agencies. In addition, at all times, (a) Guarantor must continue to Control, and own, directly or indirectly, in the aggregate, at least a 51% legal and beneficial interest in, Borrower, and (b) Acadia Realty Trust must continue to Control, and own, directly or indirectly, at least a 20% legal and beneficial interest in, each of Guarantor and any Affiliated Manager.

(e) No consent to any assumption of the Loan shall occur on or before the date that is twelve (12) Payment Dates after the Completion of the Improvements. Thereafter, Lender's consent to a Transfer of the Property and assumption of the Loan shall not be unreasonably withheld provided that Lender receives sixty (60) days prior written notice of such Transfer and no Event of Default has occurred and is continuing, and further provided that the following additional requirements are satisfied for all Transfers other than those described in subsection (d) above:

(i) Borrower shall pay Lender at the time of such Transfer a transfer fee equal to one half of one percent (0.5%) of the outstanding principal balance of the Loan for the first Transfer and one percent (1.0%) of the outstanding principal balance of the Loan for each subsequent Transfer;

(ii) Borrower shall pay any and all reasonable out-of-pocket costs incurred in connection with such Transfer (including, without limitation, Lender's counsel fees and disbursements and all recording fees, title insurance premiums and mortgage and intangible taxes and the fees and expenses of the Rating Agencies pursuant to clause (x) below);

(iii) The proposed transferee (the "**Transferee**") or Transferee's Principals must have demonstrated expertise in owning and operating properties similar in location, size, class and operation to the Property, which expertise shall be reasonably determined by Lender;

(iv) Transferee and Transferee's Principals shall, as of the date of such transfer, have an aggregate Net Worth and Liquidity reasonably acceptable to Lender;

(v) Transferee, Transferee's Principals and all other entities which may be owned or Controlled directly or indirectly by Transferee's Principals ("**Related Entities**") must not have been party to any bankruptcy proceedings, voluntary or involuntary, made an assignment for the benefit of creditors or taken advantage of any insolvency act, or any act for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) Transferee shall assume all of the obligations of Borrower under the Loan Documents in a manner satisfactory to Lender in all respects,

including, without limitation, by entering into an assumption agreement in form and substance satisfactory to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against Transferee, Transferee's Principals or Related Entities which is not reasonably acceptable to Lender;

(viii) Transferee, Transferee's Principals and Related Entities shall not have defaulted under its or their obligations with respect to any other Indebtedness in a manner which is not reasonably acceptable to Lender;

(ix) Transferee and Transferee's Principals must be able to satisfy all the representations and covenants set forth in **Sections 4.1.30, 4.1.35, 5.1.46** and **5.2.10** of this Agreement, no Default or Event of Default shall otherwise occur as a result of such Transfer, and Transferee and Transferee's Principals shall deliver (A) all organizational documentation reasonably requested by Lender, which shall be reasonably satisfactory to Lender and (B) all certificates, agreements and covenants reasonably required by Lender;

(x) Transferee shall be approved by the Rating Agencies selected by Lender, which approval, if required by Lender, shall take the form of a confirmation in writing from such Rating Agencies to the effect that such Transfer will not result in a requalification, reduction, downgrade or withdrawal of the ratings in effect immediately prior to such assumption or transfer for the Securities or any class thereof issued in connection with a Securitization which are then outstanding;

(xi) Borrower or Transferee, at its sole cost and expense, shall deliver to Lender an Additional Insolvency Opinion reflecting such Transfer satisfactory in form and substance to Lender;

(xii) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall have assumed all of the liabilities and obligations of Guarantor under the Guaranty of Completion, the Guaranty of Recourse Carveouts and the Environmental Indemnity executed by Guarantor or execute replacement guaranties and environmental indemnity reasonably satisfactory to Lender;

(xiii) Borrower shall deliver, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming the Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any additional exceptions or liens other than those contained in the Title Policy issued on the date hereof and the Permitted Encumbrances; and

(xiv) The Property shall be managed by a Qualified Manager pursuant to a Replacement Management Agreement.

Immediately upon a Transfer to such Transferee and the satisfaction of all of the above requirements, the named Borrower and Guarantor herein shall be released from all liability under this Agreement, the Note, the Mortgage and the other Loan Documents accruing after such Transfer. The foregoing release shall be effective upon the date of such Transfer, but Lender agrees to provide written evidence thereof reasonably requested by Borrower.

5.2.11 *No Distributions*. Until Completion of the Improvements and satisfaction of the conditions to the Final Advance, Borrower shall not make any distributions or other disbursements to its partners, shareholders, members or Persons owned by or related to any of its partners, shareholders or members. Borrower shall use any and all Rents collected from the Property to pay operating expenses of and real property taxes on the Property.

5.2.12 *Management Agreement*. Borrower shall not, without Lender's prior written consent (which consent shall not be unreasonably withheld): (i) surrender, terminate, cancel, amend or modify the Management Agreement; provided, that Borrower may, without Lender's consent, replace the Manager so long as the replacement manager is a Qualified Manager pursuant to a Replacement Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; or (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement in any material respect. Following the occurrence and during the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement without the prior written consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

5.2.13 *Permitted Additional Mezzanine Indebtedness*. Notwithstanding anything the contrary contained in this Agreement, but subject to the rights of Lender to convert a portion of the Loan to a mezzanine loan pursuant to **Section 9.1.2** hereof, an Additional Mezzanine Borrower (as defined below) shall have the right to pledge its direct and/or indirect equity interests in Borrower or Mezzanine Borrower, as applicable (but not of any direct interest in the Property, or Borrower, if there is Subordinate Financing in the form of a mezzanine loan) to a Permitted Mezzanine Lender (as defined below) as security for a loan to such Additional Mezzanine Borrower (an "**Additional Mezzanine Loan**") provided that the following terms and conditions are satisfied:

(a) no Event of Default shall then exist;

(b) Lender shall have received at least thirty (30) and no more than sixty (60) days' prior written notice of the proposed Additional Mezzanine Loan;

(c) the Completion of the Improvements shall have occurred and all of the conditions to the Final Advance shall have been satisfied;

(d) the aggregate amounts of the outstanding principal amount of the Total Debt (calculated without regard to any scheduled amortization paid under the Building Loan or the Project Loan) and the maximum principal amount of the Additional Mezzanine Loan

(as of the effective date of the Additional Mezzanine Loan) shall not exceed eighty-five percent (85%) of the fair market value of the Property as determined by an MAI appraisal performed, at Borrower's sole cost and expense, by an appraiser approved by Lender acting reasonably and dated, or updated, to a date within 30 days of the effective date of the Additional Mezzanine Loan, made in compliance with FIRREA and reasonably satisfactory to Lenders in all respects; the appraisal value shall be subject to review and confirmation and updating as to valuation by Lender's internal appraisal staff, whose decision shall be final absent manifest error.

(e) the Aggregate Debt Service Coverage Ratio is at least 1.15 to 1.0;

(f) Borrower shall not be obligated to repay the Additional Mezzanine Loan nor incur any obligation or liability to the Permitted Mezzanine Lender or any other Person with respect to the Additional Mezzanine Loan, and the terms and conditions of the Additional Mezzanine Loan, the collateral pledged as security therefor, and the documents evidencing the Additional Mezzanine Loan (the "**Additional Mezzanine Loan Documents**"), shall be reasonably satisfactory to Lender;

(g) a new Single-Purpose Entity shall have been formed that will directly or indirectly own 100% of the Equity Interests in Borrower, or Mezzanine Borrower, as applicable (the "**Additional Mezzanine Borrower**"), the organizational documents of Borrower, Mezzanine Borrower, if any, such Additional Mezzanine Borrower, and their respective constituent owners shall be reasonably satisfactory to Lender, and Borrower, Mezzanine Borrower, if any and such Additional Mezzanine Borrower shall otherwise satisfy all applicable Rating Agency criteria for single-purpose entities, bankruptcy remoteness, and mezzanine borrowers;

(h) the Permitted Mezzanine Lender shall have executed and delivered to Lender a subordination, standstill and intercreditor agreement acceptable to Lender in its sole and absolute discretion, which shall provide among other things that the Permitted Mezzanine Lender shall not have the right to foreclose on its interest in Borrower or Mezzanine Borrower, as applicable, or otherwise exercise its rights under the Additional Mezzanine Loan Documents unless and until the Loan is paid in full and that the Additional Mezzanine Loan shall not be transferable except to a Qualified Transferee;

(i) Borrower and Guarantor shall have executed such additional Loan Documents and such amendments to and reaffirmations of the existing Loan Documents as Lender may require, including entering into a new cash management arrangement with Lender (or modifying any existing cash management requirement) to provide for, among other things, the payment of Lender-approved operating expenses and capital expenses prior to the payment of debt service on the Additional Mezzanine Loan;

(j) Lender shall have received (i) such opinions of counsel to Borrower as Lender may require, in form and content acceptable to Lender (including a new non-consolidation opinion if one was required to be delivered in connection with the Loan); and (ii) confirmation by each of the applicable Rating Agencies that the incurrence of the Additional Mezzanine Loan will not result in any qualification, withdrawal or downgrading of any existing ratings of securities created in any applicable Securitization; and

(k) Borrower shall have paid or reimbursed Lender for all of its costs and expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the foregoing.

Notwithstanding anything herein to the contrary, none of BSCMI, Lender or their respective Affiliates shall have any obligation to provide an Additional Mezzanine Loan or any other financing.

For purposes hereof, the following terms shall have the following respective meanings:

"Aggregate Debt Service Coverage Ratio" shall mean a ratio for the applicable period in which:

- (a) the numerator is the Net Operating Income (excluding interest on credit accounts and using annualized operating expenses for any recurring expenses not paid monthly (e.g., Taxes and Insurance Premiums)) for such period as set forth in the statements required hereunder, adjusted for a vacancy rate equal to the greater of the actual vacancy rate, the market vacancy rate and an assumed vacancy rate equal to five percent (5%), without deduction for (i) actual management fees incurred in connection with the operation of the Property less (A) management fees equal to the greater of (1) assumed management fees of six percent (6%) of Gross Income from Operations or (2) the actual management fees incurred, (B) Replacement Reserve Fund contributions equal to \$16,500.00 per annum; and
- (b) the denominator is the Total Debt Service for such period assuming a thirty (30) year amortization schedule (and calculated without regard to any scheduled amortization paid under the Building Loan or the Project Loan, or the Subordinate Financing, if applicable), plus all principal and interest payable for such period under the Additional Mezzanine Loan (assuming the Additional Mezzanine Loan had been fully advanced at the beginning of such period) (provided, however, with respect to the Additional Mezzanine Loan, such ratio shall be determined utilizing a debt service constant calculated with the interest rate payable with respect to the Additional Mezzanine Loan and an assumed amortization period of thirty (30) years).

"Permitted Mezzanine Lender" shall mean a Qualified Transferee.

"Qualified Transferee" means (i) BSCMI or an Affiliate of BSCMI, or (ii) one or more of the following:

(A) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or

plan, provided that any such Person referred to in this clause (A) satisfies the Eligibility Requirements;

(B) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (B) satisfies the Eligibility Requirements;

(C) an institution substantially similar to any of the foregoing entities described in clause (ii)(A), (ii)(B) or (ii)(F) that satisfies the Eligibility Requirements;

(D) any entity Controlled by, Controlling or under common Control with any of the entities described in clause (i) or clause (ii)(A) or (ii)(C) above or clause (ii)(F) below;

(E) a Qualified Trustee in connection with (aa) a securitization of, or (bb) the creation of collateralized debt obligations (“**CDO**”) secured by, or (cc) a financing through an “owner trust” of, the Mezzanine Loan or any interest therein (any of the foregoing, a “**Securitization Vehicle**”), provided, that (1) one or more classes of securities issued by such Securitization Vehicle is initially rated at least investment grade by each of the Rating Agencies which assigned a rating to one or more classes of securities issued in connection with a Securitization (it being understood that with respect to any Rating Agency that assigned such a rating to the securities issued by such Securitization Vehicle, a Rating Agency Confirmation will not be required in connection with a transfer of the Additional Mezzanine Loan or any interest therein to such Securitization Vehicle, except that if one or more classes of securities issued in connection with a Securitization is rated by Moody’s, the transferee may not rely on this clause (1) with respect to Moody’s); (2) in the case of a Securitization Vehicle that is not a CDO, the special servicer of such Securitization Vehicle has the Required Special Servicer Rating at the time of Transfer and the related transaction documents for such Securitization Vehicle require that any successor have the Required Special Servicer Rating (such entity, an “**Approved Servicer**”) and such Approved Servicer is required to service and administer such Additional Mezzanine Loan or any interest therein in accordance with servicing arrangements for the assets held by the Securitization Vehicle which require that such Approved Servicer act in accordance with a servicing standard notwithstanding any contrary direction or instruction from any other Person; or (3) in the case of a Securitization Vehicle that is a CDO, the CDO Asset Manager and, if applicable, each Intervening Trust Vehicle that is not administered and managed by a CDO Asset Manager which is a Qualified Transferee, are each a Qualified Transferee under clauses (ii)(A), (B), (C), (D), (F) or (G) of this definition;

(F) an investment fund, limited liability company, limited partnership or general partnership (a “**Permitted Investment Fund**”) where a Permitted Fund Manager acts as general partner, managing member or fund manager and at least fifty percent (50%) of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more of the following: the Mezzanine Lender, a Qualified Transferee, an

institutional “accredited investor”, within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended, and/or a “qualified institutional buyer” or both within the meaning of Rule 144A promulgated under the Securities Exchange Act of 1934, as amended, provided such institutional “accredited investors” or “qualified institutional buyers” that are used to satisfy the 50% test set forth above in this clause (E) satisfy the financial tests in clause (i) of the definition of Eligibility Requirements; or

(G) any Person for which the Rating Agencies have issued a Rating Agency Confirmation with respect to such Transfer.

“**Eligibility Requirements**” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$650,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity of \$250,000,000 and (ii) is regularly engaged in the business of making or owning commercial real estate loans or loans similar in type as the Mezzanine Loan or operating commercial mortgage properties.

“**CDO Asset Manager**” with respect to any Securitization Vehicle (hereinafter defined) that is a CDO, shall mean the entity that is responsible for managing or administering the Additional Mezzanine Loan (or any interest therein) as an underlying asset of such Securitization Vehicle or, if applicable, as an asset of any Intervening Trust Vehicle (including, without limitation, the right to exercise any consent and control rights available to the holder of the Additional Mezzanine Loan).

“**Intervening Trust Vehicle**” shall mean with respect to any Securitization Vehicle that is a CDO, a trust vehicle or entity which holds the Additional Mezzanine Loan (or any interest therein) as collateral securing (in whole or in part) any obligation or security held by such Securitization Vehicle as collateral for the CDO.

“**Permitted Fund Manager**” means any Person that on the date of determination is not subject to a Proceeding and is either (i) a nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, or (ii) an entity that is a Qualified Transferee pursuant to clause (i) or clauses (ii)(A), (B), (C), (D) or (E) of the definition thereof, in each case, which is investing through a fund with committed capital of at least \$250,000,000.

“**Qualified Trustee**” means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two (2) rating categories of S&P and either Fitch or Moody’s (provided, however, if the Loan has been securitized, the rating requirement of any agency not a Rating Agency will be disregarded).

“Required Special Servicer Rating” means a special servicer that (i) has a rating of “CSS3” in the case of Fitch, (ii) is on the S&P’s select servicer list as a “U.S. Commercial Mortgage Special Servicer” in the case of S&P and (iii) in the case of Moody’s, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody’s within the twelve (12) month period prior to the date of determination and Moody’s has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities. The requirement of any agency not a Rating Agency shall be disregarded.

“Rating Agency Confirmation” means a written affirmation from each of the Rating Agencies that the credit rating of the Certificates assigned by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event. In the event that no Certificates are outstanding or the Loan is not part of a Securitization, any action that would otherwise require a Rating Agency Confirmation shall instead require the consent of Lender. All fees and expenses of the Rating Agencies incurred in connection with any Rating Agency Confirmation required pursuant to this Agreement as the result of a request or action of Borrower shall be paid by Borrower.

5.2.14 **Guarantor.** Notwithstanding anything to the contrary in the organizational documents of Guarantor, Guarantor shall not dissolve unless and until each of the following conditions have been satisfied: (i) an appropriate winding down of and disposition of its assets and liabilities, satisfaction of all claims, creditors and liabilities, and retention of adequate reserves to satisfy future contingent liabilities, including, without limitation, its liabilities under the Guaranty and the Environmental Indemnity; (ii) compliance with all organizational and applicable Legal Requirements relating to dissolution and winding up of Guarantor, and (iii) replacement of the Guarantor with a replacement guarantor acceptable to Lender in its sole discretion and as to which Lender has received a Rating Agency Confirmation.

ARTICLE VI.

INSURANCE; CASUALTY; CONDEMNATION; REQUIRED REPAIRS

Section 6.1 **Insurance.**

6.1.1 **Insurance Policies.** Borrower, at its sole cost and expense, shall obtain and maintain, or cause to be maintained, the following insurance policies:

(a) At all times prior to Completion of the Improvements and at any time thereafter during which construction work is being performed at the Property:

(A) Builder’s Risk “All Risk” insurance in such amount as Lender shall require but in no event less than one hundred percent (100%) of the replacement cost value of the completed Project Improvements, but excluding foundations and any other improvements not subject to physical damage). Such policy shall be written on a Builder’s Risk Completed Value Form (100% non-reporting) or its equivalent and shall include, without

limitation, coverage for loss by testing, collapse, theft, flood, and earth movement. Such insurance Policy shall also include coverage for:

(i) Loss suffered with respect to materials, equipment, heating and air conditioning machinery, machinery, and supplies, in each case owned by Borrower or required to be insured by Borrower, whether on-site, in transit, or stored offsite and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property in each case owned by Borrower or required to be insured by Borrower;

(ii) Soft costs that are recurring costs, which shall include, without limitation, delayed opening loss of income/revenue coverage for a period of recovery of not less than twelve (12) months commencing from the date the Project Improvements are as to be completed agreed to by Lender in its sole discretion, as well as costs to reproduce plans, specifications, blueprints and models in connection with any restoration following a casualty;

(iii) Demolition, debris removal and increased cost of construction, including, without limitation, increased costs arising out of changes in applicable laws and codes; and

(iv) Operation of building laws.

(B) Borrower shall cause the Borrower's Architect to obtain and maintain Architect's or Professional Liability insurance during the period commencing on the date of the Architect's Contract respectively, and expiring no earlier than five (5) years after the Completion of the Improvements. Such insurance shall be in an amount equal to at least \$1,000,000 per claim or as otherwise acceptable to Lender.

(C) Commercial General Liability insurance (vacant building) naming Lender as an additional insured with a minimum liability of \$10,000,000 including "Umbrella Liability," of like amount per occurrence and in the aggregate per location.

(D) Workers Compensation, Employer's Liability coverage and Disability insurance as required by law covering Borrower.

(E) Prior to or simultaneously with its entering into the General Contractor's Agreement, Borrower shall, or shall cause the General Contractor to, obtain and maintain Commercial General Liability coverage, including, without limitation, products and completed operations and containing no "X", "C", "U" exclusion if excavation and/or demolition is to be provided, and Automobile Liability insurance with no less than \$10,000,000 in limits per occurrence and in the aggregate per project through primary and umbrella liability coverages. Such insurance shall name Borrower as the insured and Lender as additional insured. Borrower shall also require that all Contractors cause all of their respective subcontractors to maintain similar coverage with limits of no less than \$1,000,000 per occurrence and shall include Borrower and Lender as additional insureds. All Persons engaged in work on the improvements at the Property shall maintain statutory Workers Compensation and Disability insurance in force for all workers on the job. The liability insurance to be maintained by Borrower and/or the

General Contractor pursuant to this subsection (E) shall include coverage for products and completed operations and coverage for construction defects for a period of five (5) years after Completion of the Improvements.

(b) At all times after Completion of the Improvements:

(i) comprehensive all risk insurance (“Special Form”) including, but not limited to, loss caused by any type of windstorm or hail on the Improvements and the Personal Property, (A) in an amount equal to one hundred percent (100%) of the “Full Replacement Cost,” which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Loan; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions or to be written on a no co-insurance form; (C) providing for no deductible in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for all such insurance coverage excluding windstorm and earthquake and (D) if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, coverage for loss due to operation of law in an amount equal to the full Replacement Cost, coverage for demolition costs and coverage for increased costs of construction. In addition, Borrower shall obtain: (x) if any portion of the Improvements is currently or at any time in the future located in a federally designated “special flood hazard area”, flood hazard insurance in an amount equal to the lesser of (1) the outstanding principal balance of the Note or (2) the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended or such greater amount as Lender shall require and (y) earthquake insurance in amounts and in form and substance satisfactory to Lender in the event the Property is located in an area with a high degree of seismic activity;

(ii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in subsection (i) above; (C) in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Property (as reduced to reflect expenses not incurred during a period of Restoration) for a period of at least eighteen (18) months after the date of the Casualty; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower’s reasonable estimate of the gross revenues from the Property for the succeeding eighteen (18) month period. Notwithstanding the provisions of Section 2.7.1 hereof, all proceeds payable to Lender pursuant to this subsection shall be held by Lender and shall be applied to the obligations secured by the Loan Documents from time to time

due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured by the Loan Documents on the respective dates of payment provided for in this Agreement and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance; and

(iii) comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Lender on terms consistent with the commercial property insurance policy required under subsection (i) above.

(c) At all times during the term of the Loan:

(i) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with a combined limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate and One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all written contracts and (5) contractual liability covering the indemnities contained in Article 9 of the Mortgage to the extent the same is available;

(ii) automobile liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million Dollars and 00/100 Dollars (\$1,000,000.00);

(iii) worker's compensation and employee's liability subject to the worker's compensation laws of the applicable state;

(iv) umbrella and excess liability insurance in an amount not less than Fifty Million and 00/100 Dollars (\$50,000,000.00) per occurrence on terms consistent with the commercial general liability insurance policy required under subsection (v) above, including, but not limited to, supplemental coverage for employer liability and automobile liability, which umbrella liability coverage shall apply in excess of the automobile liability coverage in clause (ii) above;

(v) Insurance covering the decrease or diminution in value of the Property resulting from the enforcement of any law, building code, zoning regulation or other Legal Requirement or act of any Governmental Authority to the extent that the Property cannot legally be restored to a condition that existed prior to the Casualty (which insurance shall be in a stipulated sum amount reasonably acceptable to Lender in its sole discretion);

(vi) the insurance required under this Sections 6.1(a)(A) and 6.1(b)(i) above shall cover perils of terrorism and acts of terrorism and Borrower shall maintain

insurance for loss resulting from perils and acts of terrorism on terms (including amounts) consistent with those required under **Sections 6.1(a)(A)** and **6.1(b)(i)** above at all times during the term of the Loan; and

(vii) upon sixty (60) days written notice, such other reasonable insurance, including, but not limited to, sinkhole or land subsidence insurance, and in such reasonable amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(d) Intentionally Omitted.

(e) All insurance provided for in this **Section 6.1** shall be obtained under valid and enforceable policies (collectively, the “**Policies**” or in the singular, the “**Policy**”), and, to the extent not specified above, shall be subject to the approval of Lender as to deductibles, loss payees and insureds. The Policies described in Section 6.1 hereof (other than those strictly limited to liability protection) shall designate Lender as loss payee. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies and within thirty (30) days after commencement of the new or renewal Policy evidence satisfactory to Lender of payment of the premiums due thereunder (the “**Insurance Premiums**”), shall be delivered by Borrower to Lender.

(f) Prior to the renewal or replacement of any Policy (the “**Existing Policy**”), any required insurance may be procured under a blanket insurance Policy covering the Property and other properties or assets of Borrower or its affiliates, provided that any such blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder and shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of this **Article VI**. Lender, in its reasonable discretion, shall determine whether such blanket Policies provide sufficient limits of insurance.

(g) Unless otherwise specified, all Policies of insurance provided for or contemplated by this **Article VI** shall, in the case of property damage, builder’s risk, boiler and machinery, flood and earthquake insurance, name Borrower as the insured and Lender (for the ratable benefit of Lenders and their successors and/or assigns) as the additional insured and shall contain a so-called New York standard non-contributing mortgagee clause or its equivalent in favor of Lender (including Lender as mortgagee and loss payee) providing that the loss thereunder shall be payable to Lender for the ratable benefit of Lenders and providing thirty (30) days’ advance notice of cancellation to Lender.

(h) All Property insurance also shall include a co-insurance waiver and Agreed Amount Endorsement. The amount of any deductible under any Policy must be reasonably acceptable to Lender. Without the Lender’s prior written consent, Borrower shall not name any Person other than the Lender, as loss payee, as it pertains to the Property, nor shall Borrower carry separate or additional insurance coverage covering the improvements at the Property concurrent in form or contributing in the event of loss with that required by this Agreement or; provided that, if blanket policies are obtained, this sentence shall not apply to

property covered by such blanket policies other than the improvements at the Property and such tenant improvements and betterments that Borrower is required to insure pursuant to the applicable Lease.

(i) Each Policy shall contain a provision whereby the insurer: (i) agrees that such Policy shall not be canceled or terminated, the coverage, deductible, and limits of such Policy shall not be modified, other provisions of such Policy shall not be modified if such Policy, after giving effect to such modification, would not satisfy the requirements of this Agreement, and such Policy shall not be so modified, canceled or fail to be renewed, without in each case, at least thirty (30) days prior written notice to Lender, (ii) waives any right to claim any Insurance Premiums and commissions against Lender or any Lender, provided that the Policy need not waive the requirement that the Insurance Premiums be paid in order for a claim to be paid to the insured and (iii) provides that Lender is permitted to make payments to effect the continuation of such policy upon notice of cancellation due to non-payment of premiums. In the event any Policy (except for general public and other liability and Workers Compensation insurance) shall contain breach of warranty provisions, such Policy shall not be invalidated by and shall insure Lender for the benefit of Lenders regardless of (A) any act, failure to act or negligence of or violation of warranties, declarations or conditions contained in such Policy by any named insured, (B) the occupancy or use of the Property for purposes more hazardous than permitted by the terms thereof, or (C) any foreclosure or other action or proceeding taken by Lender pursuant to any provision of the Mortgage or any other Loan Document.

(j) Borrower shall pay the Insurance Premiums for the Policies as the same become due and payable. Borrower shall deliver to Lender certified copies of the Policies required to be maintained pursuant to this **Article VI**; provided, however, Lender shall not be deemed by reason of the custody of such Policies to have knowledge of the contents thereof. Borrower also shall deliver to Lender within ten (10) days after Lender's request, a statement setting forth the particulars as to all such Policies, indicating that all Insurance Premiums due thereon have been paid and that the same are in full force and effect. Not later than fifteen (15) days prior to the expiration date of each Policy, Borrower shall deliver to Lender a certificate of insurance evidencing renewal of coverage as required herein. Not later than thirty (30) days after the renewal or replacement of each of the Policies, Borrower shall deliver to Lender evidence of payment of Insurance Premiums for such renewal or replacement Policies satisfactory to the Lender and not later than sixty (60) days after the renewal or replacement of each of the Policies, Borrower shall deliver to Lender an original or certified copy (as required pursuant to this paragraph) of a renewal or replacement Policy or Policies.

(k) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is maintained in full force and effect, Lender shall have the right (but not the obligation), upon notice to Borrower, to take such action as Lender deems necessary to protect Lenders' interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate after three (3) Business Days notice to Borrower if prior to the date upon which any such coverage will lapse or at any time Lender deems necessary (regardless of prior notice to Borrower) to avoid the lapse of any such coverage. All Insurance Premiums incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by the Building Loan Mortgage and shall bear interest at the Default Rate.

(l) In the event of foreclosure of the Building Loan Mortgage and/or the Project Loan Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Total Debt, all right, title and interest of Borrower in and to the Policies that are not blanket Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

6.1.2 *Insurance Company*. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and having a claims paying ability rating of "A/VII" or better by A.M. Best Company, Inc. and "A- or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the Securities (one of which shall be S&P if they are rating the Securities and one of which will be Moody's if they are rating the Securities), or if only one (1) Rating Agency is rating the Securities, then only by such Rating Agency.

Section 6.2 **Casualty and Condemnation**.

6.2.1 *Casualty*. The term "**Net Proceeds**" for purposes of this Agreement shall mean: (i) the net amount of all insurance proceeds received by Lender pursuant to **Section 6.1.1 (b)(1), (b)(iii), (c)(ii) and (c)(iv)** as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Insurance Proceeds**"), or (ii) the net amount of the Award, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("**Condemnation Proceeds**"), whichever the case may be. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**"), Borrower shall give prompt notice of such Casualty to Lender and Borrower shall promptly commence and diligently prosecute to completion the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such Casualty with such alterations as may be reasonably approved by Lender (a "**Restoration**") and otherwise in accordance with this Agreement. Borrower shall pay all costs of such Restoration whether or not such costs are covered by the Net Proceeds. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower. In addition, Lender may participate in any settlement discussions with any insurance companies (and shall approve the final settlement, which approval shall not be unreasonably withheld or delayed) with respect to any Casualty in which the Net Proceeds or the costs of completing the Restoration are equal to or greater than One Million and 00/100 Dollars (\$1,000,000.00) and Borrower shall deliver to Lender all instruments required by Lender to permit such participation.

6.2.2 *Condemnation*. Borrower shall give Lender prompt notice of any actual or threatened commencement of any proceeding for the Condemnation by any Governmental Authority of all or any part of the Property and shall deliver to Lender a copy of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any Condemnation, Borrower shall continue to pay the Total Debt at the time and in the manner provided for its

payment in the Building Loan Note and the Project Loan Note and in this Agreement and the Project Loan Agreement. Lenders shall not be limited to the interest paid on the Award by any Governmental Authority but shall be entitled to receive out of the Award interest and additional interest (if any) at the rate or rates provided in this Agreement or in the Building Loan Note or in the Project Loan Agreement or in the Project Loan Note, as applicable and the Debt shall not be reduced until any Award shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. If the Property or any portion thereof is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property pursuant to this **Section 6.2** and otherwise comply with the provisions of hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Building Loan Note or the Project Loan Note shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the Total Debt. Notwithstanding anything contained in this **Section 6.2** or this Agreement to the contrary, Lender may, in its sole discretion, elect to (y) apply the net proceeds of any Condemnation Proceeds (after deduction of Lender's reasonable costs and expenses, if any, in collecting the same) in reduction of the Total Debt in such order and manner as Lender may elect, whether due or not, or (z) make the proceeds available to Borrower for the restoration or repair of the Property. Any implied covenant in this Agreement restricting the right of Lender to make such an election is waived by Borrower. If the Condemnation Proceeds are made available to Borrower for restoration or repair, the Condemnation Proceeds shall be disbursed upon satisfaction of and in accordance with the terms and conditions set forth in this **Section 6.2**.

6.2.3 *Application of Net Proceeds.*

(a) **Minor Casualty or Condemnation.** If a Casualty or Condemnation has occurred to the Property, Borrower's right, title and interest in and to all Proceeds are, except as otherwise herein provided, hereby assigned by Borrower to Lender and all Net Proceeds shall, except as otherwise herein provided, be paid to Lender. Borrower shall, in good faith and in a commercially reasonable manner, file and prosecute the adjustment, compromise or settlement of any claim for Proceeds and, subject to Borrower's right to receive the direct payment of any Net Proceeds as herein provided, will cause the same to be paid directly to Lender to be held and applied in accordance with the provisions of this Agreement. Except upon the occurrence and during the continuance of an Event of Default, Borrower may settle any insurance claim with respect to Net Proceeds which do not One Million and 00/100 Dollars (\$1,000,000.00) (the "**Restoration Threshold**"). Whether or not an Event of Default shall have occurred and be continuing, Lender shall have the right to approve, such approval not to be unreasonably withheld, any settlement which would in Lender's reasonable judgment result in Net Proceeds which exceed the Restoration Threshold and Borrower shall deliver or cause to be delivered to Lender all instruments reasonably requested by Lender to permit such approval. Borrower shall pay all reasonable out-of-pocket costs, fees and expenses incurred by Lender on behalf of Lenders (including all reasonable attorneys' fees and expenses, the reasonable fees of insurance experts and adjusters and reasonable costs incurred in any litigation or arbitration), and interest thereon at the Default Rate to the extent not paid within fifteen (15) Business Days after delivery of a request for reimbursement by Lender, accompanied by reasonable back-up documentation, in connection with the settlement of any claim for Proceeds and the seeking and obtaining of any payment on account thereof in accordance with the foregoing provisions. If any Proceeds are

received by Borrower and may be retained by Borrower pursuant to this **Section 6.2**, such Proceeds shall, until the completion of the related Work, be held in trust for Lender for the ratable benefit of Lenders and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof, and to the extent such Proceeds exceed the Restoration Threshold, such Proceeds shall be forthwith paid directly to and held by Lender to be applied or disbursed in accordance with this **Article VI**. If an Event of Default shall have occurred and be continuing, or if Borrower fails to file any insurance claim for a period of fifteen (15) Business Days, or to prosecute same with commercially reasonable diligence following Borrower's receipt of written notice to do so from Lender, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim (including settlement thereof) with counsel satisfactory to Lender and to collect and to make receipt for any such payment, all at Borrower's expense (including payment of interest at the Default Rate for any amounts advanced by Lender pursuant to this sentence). Notwithstanding anything to the contrary set forth in this Agreement, but excluding all situations requiring prepayment of the Note, to the extent any Proceeds (either singly or when aggregated with all other then unapplied Proceeds with respect to the Property) do not exceed the Restoration Threshold, such Proceeds are to be paid directly to Borrower to be applied to restoration of the Property in accordance with the terms hereof. As soon as reasonably practicable after receipt of the Net Proceeds Borrower shall commence and satisfactorily complete with due diligence: (x) the Completion of the Improvements in accordance with the terms of this Agreement, if such Casualty or Condemnation occurs prior to the Completion of the Improvements; of (y) the Restoration in accordance with the terms of this Agreement, if such Casualty or Condemnation occurs after the Completion of the Improvements.

6.2.4 *Major Casualty or Condemnation.*

(a) If a Casualty or Condemnation has occurred to the Property, Borrower shall commence and satisfactorily complete with due diligence the Restoration in accordance with the terms of this Agreement and the Project Loan Agreement. If the Net Proceeds are equal to or greater than the Restoration Threshold or the costs of completing the Restoration, or Completion of the Improvements, as applicable, is equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration, provided that each of the following conditions are met:

(A) If the Casualty or Condemnation occurs prior to the Completion of the Improvements:

(ii) No Event of Default shall have occurred and be continuing;

(iii) Lender is reasonably satisfied that the Net Proceeds plus any Advances available under this Building Loan Agreement and Project Loan Agreement is sufficient to cause the Completion of the Improvements and pay all Project-Related Costs to be incurred in connection therewith;

(iv) Lender shall be reasonably satisfied that Completion of the Improvements will be achieved on or prior to the Required Completion Date as

such date may be extended by Force Majeure (which may include the Casualty giving rise to the Net Proceeds).

(B) If the Casualty or Condemnation occurs following the Completion of the Improvements:

(i) No Event of Default shall have occurred and be continuing;

(ii) In the event the Net Proceeds are Insurance Proceeds, less than thirty-five percent (35%) of the total floor area of the Improvements at the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are Condemnation Proceeds, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) Leases demising in the aggregate a percentage amount equal to or greater than the Rentable Space Percentage of the total rentable space in the Property which has been demised under executed and delivered Leases in effect as of the date of the occurrence of such Casualty or Condemnation, whichever the case may be, shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of any such Casualty or Condemnation, whichever the case may be, and Borrower and/or Tenant, as applicable under the respective Lease, will make all necessary repairs and restorations thereto at their sole cost and expense. The term "**Rentable Space Percentage**" shall mean (1) in the event the Net Proceeds are Insurance Proceeds, a percentage amount equal to ninety percent (90%) and (2) in the event the Net Proceeds are Condemnation Proceeds, a percentage amount equal to ninety percent (90%);

(iv) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such Casualty or Condemnation, whichever the case may be) and Borrower shall diligently pursue the same to satisfactory completion;

(v) Lender shall be satisfied that any operating deficit, including all scheduled all payments of principal and interest under the Note which will be incurred with respect to the Property as a result of the occurrence of any such Casualty or Condemnation, whichever the case may be, will be paid during the period required for Restoration from (A) the Net Proceeds, (B) the insurance coverage referred to in **Section 6.1.1(b)(ii)** hereof, if applicable, or (C) other funds of Borrower;

(vi) Lender shall be satisfied that the Restoration will be achieved, on or before the earliest to occur of (A) the date six (6) months prior to the Maturity Date, (B) such time as may be required under applicable Legal Requirements in order to repair and restore the Property to the condition it was

in immediately prior to such Casualty or to as nearly as possible the condition it was in immediately prior to such Condemnation, as applicable or (C) the expiration of the insurance coverage referred to above;

(vii) The Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(viii) The Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements; and

(ix) Such Casualty or Condemnation, as applicable, does not result in the permanent loss of access to the Property or the related Improvements

(x) the Debt Service Coverage Ratio for the Property, after giving effect to the Restoration, shall be equal to or greater than 1.20 to 1.0;

(xi) Borrower shall deliver, or cause to be delivered, to Lender a signed detailed budget approved in writing by Borrower's architect or engineer stating the entire cost of completing the Restoration, which budget shall be acceptable to Lender; and

(xii) the Net Proceeds together with any Cash or Cash Equivalent deposited by Borrower with Lender are sufficient in Lender's discretion to cover the cost of the Restoration.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this **Section 6.2.4** shall constitute additional security for the Total Debt and the Other Obligations under the Loan documents.

(c) Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all requirements set forth in **Section 6.2.4(a)** have been satisfied, (B) all relevant conditions to the making of Advances of the Building Loan shall have been satisfied with respect to disbursements of Net Proceeds for Restoration as though such disbursements were of Loan Proceeds rather than Net Proceeds, it being understood however that disbursements of Net Proceeds shall not be deemed to be advances of the Loan, (C) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (D) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other Liens of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the Title Company issuing the Title Insurance Policy.

(d) All plans and specifications required in connection with the Restoration shall be subject to prior approval by Lender and by an independent architect selected by Lender

(which shall be the Construction Consultant if the Casualty or Condemnation occurs prior to the Completion of the Improvements) (the “**Casualty Consultant**”). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to approval by Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with recovering, holding and advancing the Net Proceeds for the Restoration including, without limitation, reasonable attorneys’ fees and disbursements and the Casualty Consultant’s reasonable fees and disbursements, shall be paid by Borrower.

(e) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term “**Casualty Retainage**” shall mean an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above, be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this **Section 6.2** and all applicable Legal Requirements and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate Governmental Authorities, and Lender receives evidence reasonably satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; *provided, however*, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of such contractor’s, subcontractor’s or materialman’s contract, the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the Title Company issuing the Title Insurance Policy, and Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the Lien of the Mortgage and evidence of payment of any premium payable for such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(f) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(g) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the “**Net Proceeds Deficiency**”) with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and

shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this **Section 6.2.4** shall constitute additional security for the Debt.

(h) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this **Section 6.2.4**, and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be deposited in the Cash Management Account to be disbursed in accordance with the Cash Management Agreement provided no Event of Default shall have occurred and shall be continuing under any of the Loan Documents.

(i) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to this **Article VI** may be retained and applied by Lender toward the payment of the Total Debt in accordance with Section 2.4.2 whether or not then due and payable in such order, priority and proportions as Lender in its sole discretion shall deem proper, or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve, in its discretion.

Section 6.3 **Application of Net Proceeds**. Upon the occurrence and continuation of an Event of Default, Lender, at its option, may withdraw all the Net Proceeds or the undisbursed balance thereof and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender and may apply the such Net Proceeds and Net Proceeds Deficiency either to the payment of Restoration or to payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply such Net Proceeds and Net Proceeds Deficiency shall be in addition to all other rights and remedies provided to Lender under the Building Loan Documents.

ARTICLE VII.

RESERVE FUNDS

Section 7.1 **Tax and Insurance Escrow Fund**. Simultaneously with the Initial Advance of the Project Loan, Borrower shall deposit with Lender an amount (the "**Initial Tax and Insurance Escrow Deposit**") equal to the Taxes, Insurance Premiums and Other Charges that Lender estimates will be payable from and after the Closing Date through and including the date that the Second Tax and Insurance Escrow Deposit is payable, which shall be funded from the Project Loan Advance. At least thirty (30) day prior to the first anniversary of the date hereof, Borrower shall deposit with Lender an amount (the "**Second Tax and Insurance Escrow Deposit**") equal to the Taxes, Insurance Premiums and Other Charges that Lender estimates will be payable from and after the first anniversary of the date hereof through and including the last day of the Construction Term. Subject to the terms and conditions of the Project Loan Agreement concerning Advances, the Second Tax and Insurance Escrow Deposit shall be funded from an Advance of like amount under the Project Loan. Simultaneously with the Final Advance, Borrower shall pay to Lender an amount that, when added to the amounts payable under the next sentence, will be sufficient to accumulate with Lender sufficient funds to pay all

Taxes and Other Charges payable on the next due date thereof at least thirty (30) days prior to their respective due dates, and to pay all Insurance Premiums that Lender estimates will be payable for the next renewal of the coverage afforded by the Policies upon the expiration thereof at least thirty (30) days prior to the expiration of the Policies. In addition, Borrower shall pay to Lender (or shall cause Lender to advance) on each Payment Date occurring after the Construction Term (a) one-twelfth (1/12) of the Taxes and Other Charges that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Taxes and Other Charges at least thirty (30) days prior to their respective due dates, and (b) one-twelfth (1/12) of the Insurance Premiums that Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "**Tax and Insurance Escrow Fund**"). The Tax and Insurance Escrow Fund and the Monthly Debt Service Payment Amount, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Tax and Insurance Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to **Section 5.1.2** hereof and under the Mortgage. In making any payment relating to the Tax and Insurance Escrow Fund, Lender may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Escrow Fund shall exceed the amounts due for Taxes, Other Charges and Insurance Premiums pursuant to **Section 5.1.2** hereof, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Tax and Insurance Escrow Fund. Any amount remaining in the Tax and Insurance Escrow Fund after the Debt has been paid in full shall be returned to Borrower. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes, Other Charges and Insurance Premiums by the dates set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments (or, if such determination is made during the Construction Term, Borrower shall deposit the full amount of such deficiency within 5 days of such notice) to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the due date of the Taxes and Other Charges and/or thirty (30) days prior to expiration of the Policies, as the case may be. Notwithstanding the foregoing, Borrower's obligation to make monthly deposits with Lender for Insurance Premiums shall be suspended for so long as no Event of Default has occurred and is continuing and Borrower provides Lender with written evidence reasonably satisfactory to Lender that all insurance coverages required to be maintained by Borrower pursuant to the terms of this Agreement are being maintained in full force and effect through one or more blanket insurance policies (provided that any such blanket insurance policies provide the same level of coverage which would otherwise be provided by a stand-alone policy). Borrower shall provide evidence reasonably acceptable to Lender on an annual basis thirty (30) days prior to the expiration of the existing insurance that the insurance has been renewed and will provide notice of cancellation for non-payment. In the event Borrower fails to provide such evidence or an Event of Default occurs, however, Borrower will thereafter be required to make deposits with Lender for Insurance Premiums as provided herein.

Section 7.2 **Interest Reserve.**

7.2.1 Deposit of Interest Reserve Funds. Simultaneously with the Initial Advance of the Project Loan, Borrower shall deposit the sum of \$[_____] with Lender (the “**Initial Interest Reserve Deposit**”), which shall be funded from the Initial Advance of the Project Loan. In addition, pursuant to **Section 5.1.28(d)**, Borrower may be obligated to deposit an Additional Interest Reserve Deposit and in the event that Lender determines in its sole discretion that the Interest Reserve Funds on deposit in the Interest Reserve Account are insufficient, Borrower shall deposit with Lender an amount equal to the deficiency in the Interest Reserve Funds as determined by Lender (each an “**Interest Reserve Deposit**”, each such amount so deposited shall hereinafter be referred to as the “**Interest Reserve Fund**”). The account in which the Interest Reserve Fund are held shall hereinafter be referred to as Borrower’s “**Interest Reserve Account**”. In lieu of making the Interest Reserve Deposits with Lender, Borrower shall have the right to deliver to Lender an irrevocable Letter of Credit acceptable to Lender in the amount of the Interest Reserve Deposit.

7.2.2 Release of Interest Reserve Funds. Provided no Event of Default or monetary Default exists and no amounts remain available for Advance under the Interest Reserve Line Item of the Project Loan Budget, on each Payment Date, Lender shall apply the Interest Reserve Funds to payments of the Monthly Debt Service Payment due on such date.

7.2.3 Application of Interest Reserve Funds. Upon the occurrence of an Event of Default, Lender, at its option, may withdraw all the Interest Reserve Funds and if Lender does so, shall apply the Interest Reserve Funds either to the payment of interest due on the Loan or toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender’s right to withdraw and apply the Interest Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

Section 7.3 Replacements and Replacement Reserve.

7.3.1 Replacement Reserve Fund. From and after Completion of the Improvements, Borrower shall pay to Lender on each Payment Date an amount equal to \$1,375.00 (the “**Replacement Reserve Monthly Deposit**”) for replacements and repairs required to be made to the Property (collectively, the “**Replacements**”). Amounts so deposited shall hereinafter be referred to as Borrower’s “**Replacement Reserve Fund**” and the account in which such amounts are held shall hereinafter be referred to as Borrower’s “**Replacement Reserve Account**”. Lender may reassess its estimate of the amount necessary for the Replacement Reserve Fund from time to time, and may increase the monthly amounts required to be deposited into the Replacement Reserve Fund upon thirty (30) days notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary to maintain the proper maintenance and operation of the Property.

7.3.2 Disbursements from Replacement Reserve Account. (a) Lender shall make disbursements from the Replacement Reserve Account to pay Borrower only for the costs of the Replacements. Lender shall not be obligated to make disbursements from the Replacement Reserve Account to reimburse Borrower for the costs of routine maintenance to the Property, replacements of inventory or for costs which are a Tenant’s obligation.

(b) Lender shall, upon written request from Borrower and satisfaction of the requirements set forth in this **Section 7.3.2**, disburse to Borrower amounts from the Replacement Reserve Account necessary to pay for the actual approved costs of Replacements or to reimburse Borrower therefor, upon completion of such Replacements (or, upon partial completion in the case of Replacements made pursuant to **Section 7.3.2(e)** hereof) as determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve Account if a Default or an Event of Default exists.

(c) Each request for disbursement from the Replacement Reserve Account shall be in a form specified or approved by Lender and shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which such request for disbursement is made. With each request Borrower shall certify that all Replacements have been made in accordance with all applicable Legal Requirements of any Governmental Authority having jurisdiction over the Property. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided and, unless Lender has agreed to issue joint checks as described below in connection with a particular Replacement, each request shall include evidence satisfactory to Lender of payment of all such amounts. Except as provided in **Section 7.3.2(e)** hereof, each request for disbursement from the Replacement Reserve Account shall be made only after completion of the Replacement for which disbursement is requested. Borrower shall provide Lender evidence of completion of the subject Replacement satisfactory to Lender in its reasonable judgment.

(d) Borrower shall pay all invoices in connection with the Replacements with respect to which a disbursement is requested prior to submitting such request for disbursement from the Replacement Reserve Account or, at the request of Borrower, Lender will issue joint checks, payable to Borrower and the contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with a Replacement. In the case of payments made by joint check, Lender may require a waiver of lien from each Person receiving payment prior to Lender's disbursement from the Replacement Reserve Account. In addition, as a condition to any disbursement, Lender may require Borrower to obtain lien waivers from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for completion of its work or delivery of its materials. Any lien waiver delivered hereunder shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current reimbursement request (or, in the event that payment to such contractor, supplier, subcontractor, mechanic or materialmen is to be made by a joint check, the release of lien shall be effective through the date covered by the previous release of funds request).

(e) If (i) the cost of a Replacement exceeds Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), (ii) the contractor performing such Replacement requires periodic payments pursuant to terms of a written contract, and (iii) Lender has approved in writing in

advance such periodic payments, a request for reimbursement from the Replacement Reserve Account may be made after completion of a portion of the work under such contract, provided (A) such contract requires payment upon completion of such portion of the work, (B) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (C) all other conditions in this Agreement for disbursement have been satisfied, (D) funds remaining in the Replacement Reserve Account are, in Lender's judgment, sufficient to complete such Replacement and other Replacements when required, and (E) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(f) Borrower shall not make a request for disbursement from the Replacement Reserve Account more frequently than once in any calendar month and (except in connection with the final disbursement) the total cost of all Replacements in any request shall not be less than Ten Thousand and 00/100 Dollars (\$10,000.00).

7.3.3 *Performance of Replacements.* (a) Borrower shall make Replacements when required in order to keep the Property in condition and repair consistent with other first class, self-storage facilities in the same market segment in the metropolitan area in which the Property is located, and to keep the Property or any portion thereof from deteriorating. Borrower shall complete all Replacements in a good and workmanlike manner as soon as practicable following the commencement of making each such Replacement.

(b) Lender reserves the right, at its option, to approve all contracts or work orders over Twenty-five Thousand and 00/100 Dollars (\$25,000.00) with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Replacements. Upon Lender's request, Borrower shall assign any contract or subcontract to Lender.

(c) In the event Lender determines in its reasonable discretion that any Replacement is not being performed in a workmanlike or timely manner or that any Replacement has not been completed in a workmanlike or timely manner, after notice and a reasonable period to cure, Lender shall have the option to withhold disbursement for such unsatisfactory Replacement and to proceed under existing contracts or to contract with third parties to complete such Replacement and to apply the Replacement Reserve Fund toward the labor and materials necessary to complete such Replacement, upon reasonable prior notice to Borrower and to exercise any and all other remedies available to Lender upon an Event of Default hereunder.

(d) In order to facilitate Lender's completion or making of such Replacements pursuant to **Section 7.3.3(c)** above, Borrower grants Lender the right to enter onto the Property and perform any and all work and labor necessary to complete or make such Replacements and/or employ watchmen to protect the Property from damage. All sums so expended by Lender, to the extent not from the Replacement Reserve Fund, shall be deemed to have been advanced under the Loan to Borrower and secured by the Mortgage. For this purpose Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake such Replacements in the name of Borrower. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked.

Borrower empowers said attorney-in-fact as follows: (i) to use any funds in the Replacement Reserve Account for the purpose of making or completing such Replacements; (ii) to make such additions, changes and corrections to such Replacements as shall be necessary or desirable to complete such Replacements; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of such Replacements, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Agreement.

(e) Nothing in this **Section 7.3.3** shall: (i) make Lender responsible for making or completing any Replacements; (ii) require Lender to expend funds in addition to the Replacement Reserve Fund to make or complete any Replacement; (iii) obligate Lender to proceed with any Replacements; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Replacement.

(f) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect, or inspector) or third parties making Replacements pursuant to this **Section 7.3.3** to enter onto the Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Replacements and all materials being used in connection therewith, to examine all plans and shop drawings relating to such Replacements which are or may be kept at the Property, and to complete any Replacements made pursuant to this **Section 7.3.3**. Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this **Section 7.3.3(f)** or the completion of Replacements pursuant to this **Section 7.3.3**.

(g) Lender may require an inspection of the Property at Borrower's expense prior to making a monthly disbursement from the Replacement Reserve Account in order to verify completion of the Replacements for which reimbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified professional selected by Lender and/or may require a copy of a certificate of completion by an independent qualified professional acceptable to Lender prior to the disbursement of any amounts from the Replacement Reserve Account. Borrower shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Lender or by an independent qualified professional.

(h) The Replacements and all materials, equipment, fixtures, or any other item comprising a part of any Replacement shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialmen's or other liens (except for those Liens existing on the date of this Agreement which have been approved in writing by Lender).

(i) Before each disbursement from the Replacement Reserve Account, Lender may require Borrower to provide Lender with a search of title to the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other

liens of any nature have been placed against the Property since the date of recordation of the related Mortgage and that title to the Property is free and clear of all Liens (other than the lien of the related Mortgage and any other Liens previously approved in writing by Lender, if any).

(j) All Replacements shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters.

(k) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with a particular Replacement. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with standard mortgagee clauses making loss payable to Lender or its assigns shall be so endorsed. Certified copies of such policies shall be delivered to Lender.

7.3.4 *Failure to Make Replacements.* (a) It shall be an Event of Default under this Agreement if Borrower fails to comply with any provision of this **Section 7.3** and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of such an Event of Default, Lender may use the Replacement Reserve Fund (or any portion thereof) for any purpose, including but not limited to completion of the Replacements as provided in **Section 7.3.3**, or for any other repair or replacement to the Property or toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender's right to withdraw and apply the Replacement Reserve Fund shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

(a) Nothing in this Agreement shall obligate Lender to apply all or any portion of the Replacement Reserve Fund on account of an Event of Default to payment of the Total Debt or in any specific order or priority.

7.3.5 *Balance in the Replacement Reserve Account.* The insufficiency of any balance in the Replacement Reserve Account shall not relieve Borrower from its obligation to fulfill all preservation and maintenance covenants in the Loan Documents.

Section 7.4 **Punch List and Deferred Maintenance Reserve.**

7.4.1 *Establishment of Deferred Maintenance Reserve.* In the event that, following the Completion of the Improvements but prior to the Final Advance, Lender determines that any Punch List Items remain to be completed or if Lender determines that any condition (a "**Deferred Maintenance Condition**") exists at the Property which requires maintenance or correction, Borrower shall deposit with Lender an amount equal to 150% of Lender's good faith estimate of the cost to perform any Punch List Items plus 125% of Lender's good faith estimate of the cost of performing such Deferred Maintenance Condition (the "**Punch List and Deferred Maintenance Reserve Deposit**", such amounts so deposited shall hereinafter be referred to as the "**Punch List and Deferred Maintenance Reserve Funds**").

7.4.2 Performance of Punch List Items and Deferred Maintenance. Borrower shall correct the Punch List Items and Deferred Maintenance Conditions in a diligent, workmanlike manner and shall complete the same within a reasonable time period. Upon the request of Borrower from time to time (but not more often than once per calendar month), Lender shall cause disbursements to Borrower from the Punch List and Deferred Maintenance Reserve Funds to reimburse Borrower for reasonable costs and expenses incurred in order to correct Punch List Items and Deferred Maintenance Conditions, upon satisfaction by Borrower of each of the following conditions: (a) Borrower shall submit a written request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Punch List Items and Deferred Maintenance Conditions to be paid, (b) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall exist and remain uncured, (c) Lender shall have received an Officers' Certificate (i) stating that all the Punch List Items and Deferred Maintenance Conditions to be funded by the requested disbursement have been completed in good and workmanlike manner and in accordance with all applicable federal, state and local laws, rules and regulations, such certificate to be accompanied by a copy of any license, permit or other approval by any Governmental Authority required to commence and/or complete the Punch List Items and Deferred Maintenance Conditions, (ii) identifying each Person that supplied materials or labor in connection with the Punch List Items and Deferred Maintenance Conditions to be funded by the requested disbursement, and (iii) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such Officers' Certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, (d) at Lender's option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (e) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Borrower. Lender may condition the making of a requested disbursement on (1) reasonable evidence establishing that Borrower has applied any amounts previously received by it in accordance with this **Section 7.4** for the expenses to which specific draws made hereunder relate, (2) reasonably satisfactory site inspections, and (3) receipt of lien releases and waivers from any contractors, subcontractors and others with respect to such amounts. Lender shall not be required to make disbursements from the Required Repair Account with respect to the Property unless such requested disbursement is in an amount greater than Twenty-five Thousand and 00/100 Dollars (\$25,000.00) (or a lesser amount if the total amount in the Required Repair Account is less than Twenty-five Thousand and 00/100 Dollars (\$25,000.00), in which case only one disbursement of the amount remaining in the account shall be made) and such disbursement shall be made only upon satisfaction of each condition contained in this **Section 7.4.2**.

7.4.3 Release of Deferred Maintenance Funds. Upon substantial completion (as reasonably determined by Lender) of any Punch List Item or Deferred Maintenance Condition, and provided no Event of Default is then continuing, Lender shall, on the first following Payment Date, release to Borrower the remainder of the portion of the Punch List and Deferred Maintenance Reserve Funds held for such Punch List Item or Deferred Maintenance Condition.

Section 7.5 Intentionally Omitted.

Section 7.6 **Excess Cash Flow**. Any Excess Cash Flow that, pursuant to the Cash Management Agreement, is required to be deposited to the Excess Cash Flow Reserve (such funds “**Excess Cash Flow Funds**”) shall be deposited in an account (the “**Excess Cash Flow Reserve Account**”) and held by Lender as additional security for the payment and performance by Borrower of its obligations hereunder and other the other Loan Documents.

Section 7.7 **Operating Reserve**.

7.7.1 **Deposit of Operating Reserve Funds**. In the event that, following the Completion of the Improvements, Lender determines that the Gross Income from Operations is not sufficient to pay the Operating Expenses of the Property and the Total Debt Service, Borrower shall deposit with Lender an amount equal Lender’s good faith estimate of the shortfall in Gross Income from Operations until such time that Lender determines that the Property will achieve a Debt Service Coverage Ratio of 1.20 to 1.0 (the “**Operating Reserve Deposit**”, such amounts so deposited shall hereinafter be referred to as the “**Operating Reserve Funds**”). The account in which the Interest Reserve Fund are held shall hereinafter be referred to as the “**Operating Reserve Account**”.

7.7.2 **Release of Operating Reserve Funds**. Provide no Event of Default or monetary Default exists, in the event that the amounts on deposit in the Cash Management Account are not sufficient to make the payments required under **Section 3.4(a)** through **(g)**, of the Cash Management Agreement on each Payment Date, Lender shall apply the Operating Reserve Funds to payments of the such items.

7.7.3 **Application of Operating Reserve Funds**. Upon the occurrence of an Event of Default, Lender, at its option, may withdraw all the Operating Reserve Funds and if Lender does so, shall apply the Operating Reserve Funds toward payment of the Total Debt in such order, proportion and priority as Lender may determine in its sole discretion. Lender’s right to withdraw and apply the Operating Reserve Funds shall be in addition to all other rights and remedies provided to Lender under the Loan Documents.

7.7.4 **Release of Operating Reserve Funds**. Provided that no Event of Default or Monetary Default then exists if Lender determines that the Property has achieved a Debt Service Coverage Ratio of 1.20 to 1.0 for two consecutive Debt Service Coverage Ratio Determination Dates, Lender shall release to Borrower any amount remaining in the Operating Reserve Account.

Section 7.8 **Reserve Funds, Generally**. Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Fund as additional security for payment of the Debt. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Debt. Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the Total Debt in any order in its sole discretion. The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender. The Reserve Funds shall be held in an Eligible Account in Permitted Investments in accordance with the terms and provisions of the Cash Management Agreement. Interest earned on the

Replacement Reserve Funds shall be added to and become a part of such Reserve Fund and shall be disbursed in the same manner as other monies deposited in such Reserve Fund. Any interest on the Cash Collateral Reserve Funds, the Punch List and Deferred Maintenance Reserve Funds, the Operating Reserve Funds, the Interest Reserve Funds and the Tax and Insurance Escrow Funds shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender. Borrower shall be responsible for payment of any federal, state or local income or other tax applicable to the interest earned on the Reserve Funds credited or paid to Borrower. Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs and expenses (including litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all persons or entities supplying labor, materials or other services which are to be paid from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

Section 7.9 **Letter of Credit Rights.** Any Letter of Credit delivered to Lender pursuant to this Agreement shall be held by Lender as additional security for the Loan. Lender shall have the right to draw upon any Letter of Credit immediately and without further notice:

(a) upon the occurrence and during the continuance of an Event of Default;

(b) if Borrower fails to deliver to Lender, no less than thirty (30) days prior to the expiration of any Letter of Credit (including any renewal or extension thereof), a renewal or extension of such Letter of Credit or a replacement Letter of Credit; or

(c) if the institution issuing the Letter of Credit ceases to be an Approved Bank and Borrower fails to deliver to Lender a replacement Letter of Credit from an Approved Bank within thirty (30) days of the date that such institution ceased to be an Approved Bank.

ARTICLE VIII.

DEFAULTS

Section 8.1 **Event of Default.** (a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

(i) if any portion of the Debt is not paid within five (5) days of the date when due (except that Borrower shall not be afforded such 5-day cure period for the portion of the Debt due and payable on the Maturity Date);

(ii) if any of the Taxes (other than Taxes being contested pursuant to **Section 5.1.2** of this Agreement) are not paid when the same are due and payable or Other Charges are not paid within five (5) days after Borrower receives notice of same;

(iii) if the Policies are not kept in full force and effect, or if certified copies of the Policies are not delivered to Lender upon request;

(iv) if Borrower Transfers or otherwise encumbers any portion of the Property without Lender's prior written consent in violation of the provisions of this Agreement or the Mortgage;

(v) if any material representation or warranty made by Borrower or Guarantor herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date the representation or warranty was made;

(vi) if Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guaranty issued in connection with the Loan shall make an assignment for the benefit of creditors;

(vii) if a receiver, liquidator or trustee shall be appointed for Borrower, Mezzanine Borrower, Guarantor or any other guarantor under any guarantee issued in connection with the Loan or if Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower, Mezzanine Borrower, Guarantor or such other guarantor, or if any proceeding for the dissolution or liquidation of Borrower, Mezzanine Borrower, Guarantor or such other guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower, Mezzanine Borrower, Guarantor or such other guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days;

(viii) if Borrower attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(ix) if Borrower breaches any covenant contained in **Section 4.1.30**;

(x) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

- (xi) if any of the assumptions contained in the Insolvency Opinion delivered to Lender in connection with the Loan, or in any Additional Insolvency Opinion delivered subsequent to the closing of the Loan, is or shall become untrue in any material respect;
- (xii) if Borrower fails to pay the Administration Fee, or any portion or installment thereof, within five (5) days of the date when due;
- (xiii) If Borrower fails to deposit with Lender the cash deposit or Letter of Credit required in accordance with **Section 2.12.2** hereof;
- (xiv) if Borrower fails to materially comply with the Construction Schedule;
- (xv) if the Completion of the Improvements has not occurred on or prior to the Required Completion Date, subject to Force Majeure or if Lender or the Construction Consultant determines that Completion of the Improvements cannot occur on or prior to the Required Completion Date;
- (xvi) if any voucher or invoice is fraudulently submitted by Borrower or in connection with any Advance for services performed or for materials used in or furnished for the Property;
- (xvii) if there is any cessation at any time in construction of the Project Improvements for more than twenty (20) consecutive Business Days, other than as a result of Force Majeure;
- (xviii) if Borrower expressly confesses in writing to Lender its inability to continue or complete construction of the Project Improvements in accordance with this Agreement;
- (xix) if Lender, the Construction Consultant or their representatives are not permitted at all reasonable times upon not less than three (3) Business Days notice to enter upon the Property, inspect the Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all the Plans and Specifications, or if Borrower shall fail to furnish to Lender or its authorized representative, when requested upon not less than five (5) Business Days notice, copies of the Plans and Specifications;
- (xx) if a material adverse change in Borrower's financial condition shall occur which would, in Lender's reasonable determination, materially and adversely affect Borrower's ability to perform its obligations under this Agreement or any other document evidencing or securing the Loan beyond any applicable notice and grace periods expressly set forth in the Loan Documents;
- (xxi) if the conditions precedent to the Final Advance have not been satisfied on or prior to the Required Completion Date;

(xxii) If the Guarantor fails to maintain the Required Liquidity and the Required Net Worth covenants specified in the Guaranty of Completion or if the Guarantor shall default under the Guaranty of Completion or the Guaranty of Recourse Carveouts;

(xxiii) if a material default has occurred and continues beyond any applicable cure period under the Management Agreement (or any Replacement Management Agreement) and if such default permits the Manager thereunder to terminate or cancel the Management Agreement (or any Replacement Management Agreement);

(xxiv) if Borrower shall continue to be in Default under any of the terms, covenants or conditions of **Section 9.1** hereof, or fails to cooperate with Lender in connection with a Securitization pursuant to the provisions of **Section 9.1** hereof, in either case for three (3) Business Days after notice to Borrower from Lender;

(xxv) if an Event of Default (as defined in the Project Loan Agreement) shall have occurred;

(xxvi) if there shall be default by Borrower or Guarantor under any of the other Loan Documents, beyond applicable cure periods, if any, contained in such documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such other default, event or condition is to accelerate the maturity of all or any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt;

(xxvii) if Guarantor shall dissolve or cease to exist during the term of the Loan, except in compliance with the provisions of **Section 5.2.15** hereof;

(xxviii) if all of the Initial Advance Conditions, including, without limitation, the Unsatisfied Initial Advance Conditions, are not satisfied by the Required Initial Advance Date; or

(xxix) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in subsections (i) to (xxviii) above, for twenty (20) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in clauses (vi), (vii) or (viii) above) and at any time thereafter, in addition to

any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, Lender may take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and any or all of the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in clauses (vi), (vii) or (viii) above, the Debt and Other Obligations of Borrower hereunder and under the other Loan Documents shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Section 8.2 **Remedies.**

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singularly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that if an Event of Default is continuing (i) to Lender is not subject to any “one action” or “election of remedies” law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any preference or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Mortgage in any manner and for any amounts secured by the Mortgage then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Mortgage to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Mortgage to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Mortgage as Lender may elect. Notwithstanding one or more partial foreclosures, the

Property shall remain subject to the Mortgage to secure payment of sums secured by the Mortgage and not previously recovered.

(c) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (the “**Severed Loan Documents**”) in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) Business Days after notice has been given to Borrower by Lender of Lender’s intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and the Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

Section 8.3 **Remedies Cumulative; Waivers.** The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender’s rights, powers and remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender’s sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

ARTICLE IX.

SPECIAL PROVISIONS

Section 9.1 **Sale of Notes and Securitization.** Borrower acknowledges and agrees that Lender may sell all or any portion of the Loan and the Loan Documents, or issue one or more participations therein, or consummate one or more private or public securitizations of rated single- or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or any portion of the Loan and the Loan Documents or a pool of assets that include the Loan and the Loan Documents (such sales, participations and/or securitizations, collectively, a “**Securitization**”). At the request of Lender, and to the extent not already required to be provided by or on behalf of Borrower under this Agreement, Borrower shall use reasonable

efforts to provide information not in the possession of Lender or which may be reasonably required by Lender or take other actions reasonably required by Lender, in each case in order to satisfy the market standards to which Lender customarily adheres or which may be reasonably required by prospective investors and/or the Rating Agencies in connection with any such Securitization including, without limitation, to:

(a) provide additional and/or updated Provided Information, together with appropriate verification and/or consents related to the Provided Information through letters of auditors or opinions of counsel of independent attorneys reasonably acceptable to Lender, prospective investors and/or the Rating Agencies;

(b) assist in preparing descriptive materials for presentations to any or all of the Rating Agencies, and work with, and if requested, supervise, third-party service providers engaged by Borrower and approved by Lender, Guarantor and their respective affiliates to obtain, collect, and deliver information requested or required by Lender, prospective investors and/or the Rating Agencies;

(c) deliver (i) an Additional Insolvency Opinion and an opinion with respect to, due execution and enforceability with respect to the Property, Borrower, Guarantor and their respective Affiliates and the Loan Documents, and such other legal opinions as Lender may request including, without limitation, a so called "10b-5" opinion, and (ii) revised organizational documents for Borrower, which counsel opinions and organizational documents shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

(d) if required by any prospective investor and/or any Rating Agency, use commercially reasonable efforts to deliver such additional tenant estoppel letters, subordination agreements or other agreements from parties to agreements that affect the Property, which estoppel letters, subordination agreements or other agreements shall be reasonably satisfactory to Lender, prospective investors and/or the Rating Agencies;

(e) make such representations and warranties as of the closing date of the Securitization with respect to the Property, Borrower, Guarantor and the Loan Documents as may be reasonably requested by Lender, prospective investors and/or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof, including the representations and warranties made in the Loan Documents;

(f) execute such amendments to the Loan Documents as may be requested by Lender, prospective investors and/or the Rating Agencies to effect the Securitization;

(g) if requested by Lender, review any information regarding the Property, Borrower, Guarantor, and the Loan which is contained in a preliminary or final private placement memorandum, prospectus, prospectus supplement (including any amendment or supplement to either thereof), or other disclosure document to be used by Lender or any affiliate thereof; and

(h) supply to Lender such documentation, financial statements and reports in form and substance required in order to comply with any applicable securities laws.

9.1.2 *Loan Components.*

(a) Borrower covenants and agrees that in connection with any Securitization of the Loan, upon Lender's request, Borrower shall deliver one or more new component notes to replace the original note or modify the original note to reflect multiple components of the Loan (and such new notes or modified note shall initially have the same fully funded weighted average interest rate as the original note, but such new notes or modified note may subsequently change the weighted average spread and apply principal, interest rates and amortization of the Loan between the components in a manner specified by Lender in its sole discretion) and modify the Cash Management Agreement with respect to the newly created components such that the pricing and marketability of the Securities and the size of each class of Securities and the rating assigned to each such class by the Rating Agencies shall provide the most favorable rating levels and achieve the optimum rating levels for the Loan, provided that the same do not materially increase Borrower's obligations and/or liabilities under the Loan Documents or materially decrease Borrower's rights under the Loan Documents.

(b) Borrower covenants and agrees that Lender may hereafter convert any portion of the Loan to subordinate financing, including one or more tranches of mezzanine debt, preferred equity, subordinate debt or participation in such loan, subordinate to such loan (collectively, "**Subordinate Financing**"), provided, however, such Subordinate Financing and the Loan following the creation of the Subordinate Financing shall, in the aggregate, initially have the same fully funded weighted average interest rate as the fully funded interest rate of the Loan prior to the creation of such Subordinate Financing, but such Subordinate Financing may subsequently change the weighted average spread and Lender may apply principal, interest rates and amortization of the Loan and the Subordinate Financing in a manner specified by Lender in its sole discretion. If the Subordinate Financing takes the form of a mezzanine loan, a mezzanine borrower (the "**Mezzanine Borrower**") may be created which will own one hundred percent (100%) of the equity interests in the Borrower. One hundred percent (100%) of the ownership and economic interests in the Mezzanine Borrower may, at Lender's discretion, be required to be pledged as security for such tranches of Subordinate Financing, if any. A default with the related Loan shall be a default under the respective Subordinate Financing. Such Subordinate Financing shall be subject to an intercreditor agreement by and between the Lender and the subordinate lender(s).

9.1.3 *Costs of Subordinate Financing.* Borrower shall be responsible for all costs and expenses incurred by Lender in connection with any Subordinate Financing, (including reasonable attorneys' fees and disbursements) including without limitation (i) the preparation, negotiation, execution and delivery of any mezzanine loan documents ("**Mezzanine Loan Documents**") and the consummation of the transactions contemplated thereby and all the costs of furnishing all opinions by counsel for Borrower and Mezzanine Borrower; (ii) Mezzanine Borrower's and Lender's ongoing performance under and compliance with the Mezzanine Loan Documents, including confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Mezzanine Loan Document and any other documents or matters requested by Lender; (iv) filing and recording of any Mezzanine Loan Documents; (v) title insurance (including any applicable mezzanine endorsements or UCC endorsements or policies), surveys, inspections and appraisals; (vi) the creation, perfection or

protection of Lender's Liens in the collateral securing the Mezzanine Loan Documents (including fees and expenses for title and lien searches, intangibles taxes, personal property taxes, recording taxes, due diligence expenses, travel expenses, accounting firm fees, costs of appraisals, environmental reports and Construction Consultant, surveys and engineering reports); and (vii) fees charged by Rating Agencies in connection with the creation of the Subordinate Financing, or any modification of the Loan or the Subordinate Financing.

Section 9.2 **Securitization Indemnification.** (a) Borrower understands that certain of the Provided Information may be included in Disclosure Documents in connection with the Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies, and service providers relating to the Securitization. In the event that the Disclosure Document is required to be revised prior to the sale of all Securities, Borrower will cooperate with the holder of the Note in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) The Indemnifying Persons agree to provide, in connection with the Securitization, an indemnification agreement (A) certifying that (i) the Indemnifying Persons have carefully examined the Disclosure Documents, including without limitation, the sections entitled "Risk Factors," "Special Considerations," "Description of the Mortgages," "Description of the Mortgage Loans and Mortgaged Property," "The Manager," "The Borrower" and "Certain Legal Aspects of the Mortgage Loan," and (ii) such sections and such other information in the Disclosure Documents (to the extent such information relates to or includes any Provided Information or any information regarding the Properties, Borrower, Manager and/or the Loan) (collectively with the Provided Information, the "**Covered Disclosure Information**") do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (B) jointly and severally indemnifying Lender, BSCMI (whether or not it is the Lender), any Affiliate of BSCMI that has filed any registration statement relating to the Securitization or has acted as the sponsor or depositor in connection with the Securitization, any Affiliate of BSCMI that acts as an underwriter, placement agent or initial purchaser of Securities issued in the Securitization, any other co-underwriters, co-placement agents or co-initial purchasers of Securities issued in the Securitization, and each of their respective officers, directors, partners, employees, representatives, agents and Affiliates and each Person or entity who Controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Indemnified Persons**"), for any losses, claims, damages, liabilities, costs or expenses (including without limitation legal fees and expenses for enforcement of these obligations (collectively, the "**Liabilities**") to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Covered Disclosure Information or arise out of or are based upon the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (C) agreeing to reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Person, as they

are incurred, in connection with investigating or defending the Liabilities. This indemnity agreement will be in addition to any liability which Borrower may otherwise have. Moreover, the indemnification and reimbursement obligations provided for in clauses (B) and (C) above shall be effective, valid and binding obligations of the Indemnifying Persons whether or not an indemnification agreement described in clause (A) above is provided.

(c) In connection with Exchange Act Filings, the Indemnifying Persons jointly and severally agree to indemnify (i) the Indemnified Persons for Liabilities to which any such Indemnified Person may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact in the Covered Disclosure Information, or the omission or alleged omission to state in the Covered Disclosure Information a material fact required to be stated therein or necessary in order to make the statements in the Covered Disclosure Information, in light of the circumstances under which they were made, not misleading and (ii) reimburse each Indemnified Person for any legal or other expenses incurred by such Indemnified Persons, as they are incurred, in connection with defending or investigating the Liabilities.

(d) Promptly after receipt by an Indemnified Person of notice of any claim or the commencement of any action, the Indemnified Person shall, if a claim in respect thereof is to be made against any Indemnifying Person, notify such Indemnifying Person in writing of the claim or the commencement of that action; provided, however, that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have under the indemnification provisions of this **Section 9.2** except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify such Indemnifying Person shall not relieve it from any liability which it may have to an Indemnified Person otherwise than under the provisions of this **Section 9.2**. If any such claim or action shall be brought against an Indemnified Person, and it shall notify any Indemnifying Person thereof, such Indemnifying Person shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to the Indemnified Person. After notice from any Indemnifying Person to the Indemnified Person of its election to assume the defense of such claim or action, such Indemnifying Person shall not be liable to the Indemnified Person for any legal or other expenses subsequently incurred by the Indemnified Person in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action include both an Indemnifying Person, on the one hand, and one or more Indemnified Persons on the other hand, and an Indemnified Person shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Persons that are different or in addition to those available to the Indemnifying Person, the Indemnified Person or Persons shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Person or Persons. The Indemnified Person shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Indemnified Person is seeking reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are solely related to the defense of a claim for which the Indemnifying Person is required hereunder to indemnify such Indemnified Person. No Indemnifying Person shall be liable for the expenses of more than one (1) such separate counsel unless such Indemnified Person shall have reasonably concluded

that there may be legal defenses available to it that are different from or additional to those available to another Indemnified Person.

(e) Without the prior written consent of BSCMI (which consent shall not be unreasonably withheld or delayed), no Indemnifying Person shall settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action, suit or proceeding) unless the Indemnifying Person shall have given BSCMI reasonable prior written notice thereof and shall have obtained an unconditional release of each Indemnified Person hereunder from all liability arising out of such claim, action, suit or proceedings. As long as an Indemnifying Person has complied with its obligations to defend and indemnify hereunder, such Indemnifying Person shall not be liable for any settlement made by any Indemnified Person without the consent of such Indemnifying Person (which consent shall not be unreasonably withheld or delayed).

(f) The Indemnifying Persons agree that if any indemnification or reimbursement sought pursuant to this **Section 9.2** is finally judicially determined to be unavailable for any reason or is insufficient to hold any Indemnified Person harmless (with respect only to the Liabilities that are the subject of this **Section 9.2**), then the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, shall contribute to the Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (x) in such proportion as is appropriate to reflect the relative benefits to the Indemnifying Persons, on the one hand, and such Indemnified Person, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (y) if the allocation provided by clause (x) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (x) but also the relative faults of the Indemnifying Persons, on the one hand, and all Indemnified Persons, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this **Section 9.2**, (A) no party found liable for a fraudulent misrepresentation shall be entitled to contribution from any other party who is not also found liable for such fraudulent misrepresentation, and (B) the Indemnifying Persons agree that in no event shall the amount to be contributed by the Indemnified Persons collectively pursuant to this paragraph exceed the amount of the fees actually received by the Indemnified Persons in connection with the closing of the Loan.

(g) The Indemnifying Persons agree that the indemnification, contribution and reimbursement obligations set forth in this **Section 9.2** shall apply whether or not any Indemnified Person is a formal party to any lawsuits, claims or other proceedings. The Indemnifying Persons further agree that the Indemnified Persons are intended third party beneficiaries under this **Section 9.2**.

(h) The liabilities and obligations of the Indemnified Persons and the Indemnifying Persons under this **Section 9.2** shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

(i) Notwithstanding anything to the contrary contained herein, Borrower shall have no obligation to act as depositor with respect to the Loan or an issuer or registrant with respect to the Securities issued in any Securitization.

Section 9.3 **Exculpation**. Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note, this Agreement, the Mortgage or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Note, this Agreement, the Mortgage and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral given to Lender, and Lender, by accepting the Note, this Agreement, the Mortgage and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with the Note, this Agreement, the Mortgage or the other Loan Documents. The provisions of this Section shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Mortgage; (c) affect the validity or enforceability of or any guaranty made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Mortgage or to commence any other appropriate action or proceeding in order for Lender to exercise its remedies against the Property; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (i) fraud or intentional misrepresentation by Borrower or Guarantor in connection with the Loan;
- (ii) the gross negligence or willful misconduct of Borrower;
- (iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity Agreement or in the Mortgage concerning environmental laws, hazardous substances and asbestos and any indemnification of Lender with respect thereto in either document;
- (iv) the removal or disposal of any portion of the Property after an Event of Default;

(v) the misapplication or conversion by Borrower of (A) any Insurance Proceeds paid by reason of any loss, damage or destruction to the Property, (B) any Awards received in connection with a Condemnation of all or a portion of the Property, (C) any Rents following an Event of Default, or (D) any Rents paid more than one month in advance;

(vi) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property;

(vii) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof; or

(viii) the breach of any representation, warranty, covenant or indemnification provision in the Guaranty of Completion or Guaranty of Recourse Carveouts.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by the Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Lender in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower (i) in the event of: (a) Borrower filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, in which Borrower colludes with, or otherwise assists such Person, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (c) Borrower filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) Borrower consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; or (e) Borrower making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (ii) if the first full monthly payment of interest on the Note is not paid when due; ; (iii) if Borrower fails to maintain its status as a Single Purpose Entity, after the Guaranty Notice (as defined in the Guaranty of Recourse Carveouts) if Borrower fails to permit on-site inspections of the Property, fails to provide financial information, or fails to appoint a new property manager upon the request of Lender as permitted under this Agreement, each as required by, and in accordance with, the terms and provisions of this Agreement or the Mortgage; (iv) if Borrower fails to obtain Lender's prior written consent to any Indebtedness or voluntary Lien encumbering the Property; or (v) if Borrower fails to obtain Lender's prior written consent to any Transfer as required by this Agreement or the Mortgage.

Section 9.4 **Intentionally Omitted.**

Section 9.5 **Servicer.** At the option of Lender, the Loan may be serviced by a servicer/trustee (any such servicer/trustee, together with its agents, nominees or designees, are collectively referred to as “**Servicer**”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a servicing agreement (the “**Servicing Agreement**”) between Lender and Servicer. Borrower shall not be responsible for any set-up fees or any other initial costs relating to or arising under the Servicing Agreement or the monthly servicing fee due to Servicer under the Servicing Agreement; provided, however, that Borrower shall be responsible for expenses incurred by Lender or Servicer as set forth in **Section 10.13** hereof.

ARTICLE X.

MISCELLANEOUS

Section 10.1 **Survival.** This Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by Lender of the Loan and the execution and delivery to Lender of the Note, and shall continue in full force and effect so long as all or any of the Debt is outstanding and unpaid unless a longer period is expressly set forth herein or in the other Loan Documents. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the legal representatives, successors and assigns of such party. All covenants, promises and agreements in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 10.2 **Lender’s Discretion.** Whenever pursuant to this Agreement, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

Section 10.3 **Governing Law.**

(B) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD

TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

National Registered Agents, Inc.
875 Avenue of the Americas, Suite 501
New York, New York 10001

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH

SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 10.4 **Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, or of the Note, or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 10.5 **Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Note or under any other Loan Document, or any other instrument given as security therefor, shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Note or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Note or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 10.6 **Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified or registered United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, and by telecopier (with answer back acknowledged), addressed as follows (or at such other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section):

If to Lender: Bear Stearns Commercial Mortgage, Inc.
383 Madison Avenue
New York, New York 10179
Attention: J. Christopher Hoeffel
Facsimile No.: (212) 272-7047

with a copy to: Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178
Attention: Paul A. Keenan, Esq.
Facsimile No.: (212) 808-7897

If to Borrower: Acadia Atlantic Avenue LLC
c/o Acadia Realty Trust
1311 Mamaroneck Avenue, Suite 260
White Plains, New York 10605
Attention: Robert Masters, Esq., General Counsel
Facsimile No.: (914) 288-2162

If to MERS: MERS Commercial
P.O. Box 2300
Flint, Michigan 48501-2300

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; or in the case of expedited prepaid delivery and telecopy, upon the first attempted delivery on a Business Day; or in the case of telecopy, upon sender's receipt of a machine-generated confirmation of successful transmission after advice by telephone to recipient that a telecopy notice is forthcoming.

Section 10.7 **Trial by Jury.**

BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 10.8 **Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.9 **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 10.10 **Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the obligations of Borrower hereunder. To the extent Borrower makes a payment or payments to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under

any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

Section 10.11 **Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.12 **Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

Section 10.13 **Expenses; Indemnity.** (1) Borrower covenants and agrees to pay or, if Borrower fails to pay, to reimburse, Lender upon receipt of written notice from Lender for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with (i) the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby and all the costs of furnishing all opinions by counsel for Borrower (including without limitation any opinions requested by Lender as to any legal matters arising under this Agreement or the other Loan Documents with respect to the Property); (ii) Borrower's ongoing performance of and compliance with Borrower's respective agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (iii) Lender's ongoing performance and compliance with all agreements and conditions contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Lender; (v) securing Borrower's compliance with any requests made pursuant to the provisions of this Agreement; (vi) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred in creating and perfecting the Lien in favor of Lender pursuant to this Agreement and the other Loan Documents; (vii) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Borrower, this Agreement, the other Loan Documents, the Property, or any other security given for the Loan;

and (viii) enforcing any obligations of or collecting any payments due from Borrower under this Agreement, the other Loan Documents or with respect to the Property (including any fees incurred by Servicer in connection with the transfer of the Loan to a special servicer prior to a Default or Event of Default) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” or of any insolvency or bankruptcy proceedings; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. Any cost and expenses due and payable to Lender may be paid from any amounts in the Clearing Account or Cash Management Account, as applicable.

(a) Borrower shall indemnify, defend and hold harmless Lender from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for Lender in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not Lender shall be designated a party thereto), that may be imposed on, incurred by, or asserted against Lender in any manner relating to or arising out of (i) any breach by Borrower of its obligations under, or any material misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, or (ii) the use or intended use of the proceeds of the Loan (collectively, the “**Indemnified Liabilities**”); provided, however, that Borrower shall not have any obligation to Lender hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of Lender. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Lender.

(b) Borrower covenants and agrees to pay for or, if Borrower fails to pay, to reimburse Lender for, any fees and expenses incurred by any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

Section 10.14 **Schedules and Exhibits Incorporated.** The Schedules and Exhibits annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 10.15 **Offsets, Counterclaims and Defenses.** Any assignee of Lender’s interest in and to this Agreement, the Note and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

Section 10.16 **No Joint Venture or Partnership; No Third Party Beneficiaries.**

(a) Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender nor to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

(b) This Agreement and the other Loan Documents are solely for the benefit of Lender and Borrower and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Lender and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lender to make the Loan hereunder are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender if, in Lender's sole discretion, Lender deems it advisable or desirable to do so.

Section 10.17 **Publicity.** All news releases, publicity or advertising by Borrower or its Affiliates through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, to Lender, BSCMI, or any of their Affiliates shall be subject to the prior written approval of Lender.

Section 10.18 **Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

Section 10.19 **Waiver of Counterclaim.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents.

Section 10.20 **Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or

recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any equity interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

Section 10.21 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders, in connection with the transactions contemplated by this Agreement. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this **Section 10.21** shall survive the expiration and termination of this Agreement and the payment of the Debt.

Section 10.22 **Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Commitment Letter dated June 28, 2007 between Borrower and Lender are superseded by the terms of this Agreement and the other Loan Documents.

Section 10.23 **Joint and Several Liability.** If Borrower consists of more than one (1) Person the obligations and liabilities of each Person shall be joint and several.

Section 10.24 **Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of hazardous substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times and upon reasonable advance notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, **Section 5.1.11** hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Property and/or construction of the Project Improvements).

The rights described above in this **Section 10.24** may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender.

Section 10.25 **MERS**. Mortgage Electronic Registration Systems, Inc., a Delaware corporation (“MERS”), serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and only holds legal title to the interests granted, assigned, and transferred in the Mortgage and the Assignments of Leases. MERS shall at all times comply with the instructions of Lender. If necessary to comply with law or custom, MERS (for the benefit of Lender) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of the Mortgage. Subject to the foregoing, all references in the Loan Documents to “Mortgagee” shall include Lender and its successors and assigns. The relationship of Mortgagor and Lender under the Mortgage and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender (the role of MERS thereunder being solely that of nominee as set forth above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property.

[SIGNATURE PAGE TO BUILDING LOAN AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

BORROWER

ACADIA ATLANTIC AVENUE LLC,
a Delaware limited liability company

By: _____,
Name: Robert Masters
Title: Senior Vice President

LENDER

BEAR STEARNS COMMERCIAL MORTGAGE, INC.,
a New York corporation

By: _____
Name:
Title: Authorized Signatory

**LIST OF AFFILIATES OF
ACADIA REALTY TRUST**

Last Revised 2/12/08

Acadia Realty Trust
Acadia Realty Limited Partnership

ACRS, Inc.

Acadia Bartow Avenue, LLC
Acadia Mad River Property LLC
Acadia Merrillville Realty, L.P.
Acadia Town Line, LLC
Blackman Fifty L.P.
Heathcote Associates, L.P.
Mark Plaza Fifty L.P.
Mark Twelve Associates, L.P.
Pacesetter/Ramapo Associates
RD Abington Associates Limited Partnership
RD Absecon Associates, L.P.
RD Bloomfield Associates Limited Partnership
RD Branch Associates L.P.
RD Elmwood Associates, L.P.
RD Hobson Associates, L.P.
RD Methuen Associates Limited Partnership
RD Smithtown, LLC
RD Village Associates Limited Partnership
RD Woonsocket Associates Limited Partnership

Acadia 239 Greenwich Avenue, LLC
Acadia Heathcote, LLC
Acadia Merrillville Realty, Inc.
Acadia Pacesetter LLC
Acadia Property Holdings, LLC
Blackman Fifty Realty Corp.
Mark Plaza Fifty Realty Corp.
New Castle Fifty Realty Corp.
RD Absecon, Inc.

239 Greenwich Associates Limited Partnership
Crossroads II
Crossroads Joint Venture

Acadia Realty Acquisition I, LLC
Acadia Strategic Opportunity Fund, LP

Acadia Amherst, LLC
Acadia Granville, LLC
Acadia Sheffield Crossing, LLC

Acadia Brandywine Condominium, LLC
Acadia Brandywine Subsidiary, LLC
Acadia Brandywine Town Center, LLC
Acadia Market Square, LLC

Acadia K-H, LLC
AmCap Acadia 8th Addition, LLC
AmCap Acadia 9th Addition, LLC
AmCap Acadia Agent, LLC
AmCap Acadia Atlanta LP
AmCap Acadia Batesville, LLC
AmCap Acadia Benton, LLC
AmCap Acadia Carthage LP
AmCap Acadia Cary, LLC
AmCap Acadia Cincinnati, LLC
AmCap Acadia Conroe LP
AmCap Acadia Great Bend, LLC
AmCap Acadia Hanrahan, LLC
AmCap Acadia Indianapolis, LLC
AmCap Acadia Irving LP
AmCap Acadia K-H Holding, LLC
AmCap Acadia K-H, LLC
AmCap Acadia Little Rock, LLC
AmCap Acadia Longview, LLC
AmCap Acadia Mustang, LLC
AmCap Acadia Pratt, LLC
AmCap Acadia Roanoke, LLC
AmCap Acadia Roswell, LLC
AmCap Acadia Ruidoso, LLC
AmCap Acadia San Ramon, LLC

AmCap Acadia Shreveport, LLC
AmCap Acadia Springerville, LLC
AmCap Acadia Tucson, LLC
AmCap Acadia Tulsa, LLC

Acadia Tarrytown, LLC

Acadia D.R. Management, Inc.
Acadia Hendon Hitchcock Plaza, LLC

Acadia Haygood, LLC
Acadia Sterling Heights, LLC

Acadia Realty Acquisition II, LLC
Acadia Strategic Opportunity Fund II, LLC

Acadia Crossroads, LLC
Crossroads Joint Venture, LLC
Crossroads II, LLC

Acadia New Loudon, LLC

Acadia Mervyn I, LLC
Acadia Mervyn II, LLC
Acadia Mervyn Investors I, LLC
Acadia Mervyn Investors II, LLC
Acadia Mervyn Promote Member I, LLC
Acadia Mervyn Promote Member II, LLC

Acadia-PA East Fordham Acquisitions, LLC
P/A-Acadia Pelham Manor, LLC
Acadia-P/A Holding Company, LLC

Acadia Crescent Plaza LLC

Acadia-P/A Canarsie, LLC

Acadia-P/A Sherman Avenue, LLC

Acadia Berlin LLC

Acadia Boonton LLC

ABR Amboy Road LLC

APA 216st Street LLC

Acadia-P/A 161st Street LLC

Acadia-P/A Liberty LLC

Acadia Oakbrook LLC

Acadia Clark-Diversey LLC

Acadia Naamans Road LLC

Acadia Elmwood Park LLC

Acadia Chestnut LLC

Acadia Chestnut Hill LLC

Acadia-P/A GWB LLC

George Washington Bridge Bus Station Development Venture LLC

Acadia Shore Road LLC

Secor Pelham LLC

Acadia Albertsons Investors LLC

Acadia Shopko Investors LLC

Acadia Cub Foods Investors LLC

Acadia Walnut Hill LLC

Acadia Marsh Investors LLC

Acadia 2914 Third Avenue LLC

Albee Development LLC

Acadia-P/A/T Albee LLC

Acadia-P/A Albee LLC

Albee Office Development LLC

Albee Retail Development LLC

Acadia Atlantic Avenue LLC

Acadia West Shore Expressway LLC

Acadia West 54th Street LLC

Fordham Place Office LLC

Acadia Strategic Opportunity Fund III LLC

Acadia Realty Acquisition III LLC

Acadia Investors III, Inc.

Acadia-P/A Holding Company II LLC

Acadia 3319 Atlantic Avenue LLC

Canarsie Plaza LLC

Acadia-Storage Post Byram LLC

Acadia Byram LLC

Acadia Rex LLC

Acadia-P/A Management Services LLC

Acadia Westport LLC

125 Main Street Associates LLC

Acadia-P/A Sheepshead Bay LLC

Acadia Storage Post LLC

Acadia Storage Company LLC

Acadia Self Storage LLC

Acadia Storage Post Metropolitan Avenue LLC

Acadia Storage Post Portfolio Company LLC

Acadia Suffern LLC

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 33-95966 and 333-87993) pertaining to the 1999 Share Incentive Plan of Acadia Realty Trust; in the Registration Statement (Form S-3 No. 33-31630) of Acadia Realty Trust; in the Registration Statement (Form S-3 No. 333-139950) of Acadia Realty Trust in the Registration Statement (Form S-3 No. 333-114785) of Acadia Realty Trust; in the Registration Statement (Form S-3 No. 333-126712) of Acadia Realty Trust; and in the Registration Statement (Form S-8 No. 333-106758) pertaining to the 2003 Employee Share Incentive Plan of Acadia Realty Trust of our reports dated February 29, 2008, related to the consolidated financial statements and schedule and the effectiveness of internal control over financial reporting of Acadia Realty Trust included in this Annual Report on Form 10-K for the year ended December 31, 2007.

/s/ BDO Seidman, LLP

*New York, New York
February 29, 2008*

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO RULE 13a — 14(a) (SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)

I, Kenneth F. Bernstein, certify that:

1. I have reviewed this annual report on Form 10-K of Acadia Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Kenneth F. Bernstein

Kenneth F. Bernstein
President and Chief Executive Officer
February 29, 2008

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO RULE 13a — 14(a) (SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)

I, Michael Nelsen, certify that:

1. I have reviewed this annual report on Form 10-K of Acadia Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Michael Nelsen

Michael Nelsen
Senior Vice President and
Chief Financial Officer
February 29, 2008

EXHIBIT 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 (SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

In connection with the Annual Report of Acadia Realty Trust (the "Company") on Form 10-K for the year ended December 31, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kenneth F. Bernstein, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Kenneth F. Bernstein

Kenneth F. Bernstein

President and Chief Executive Officer

February 29, 2008

EXHIBIT 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350 (SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

In connection with the Annual Report of Acadia Realty Trust (the "Company") on Form 10-K for the year ended December 31, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael Nelsen, Sr. Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Michael Nelsen

Michael Nelsen
Senior Vice President and
Chief Financial Officer
February 29, 2008